

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 08-CR-76

v. : U. S. Courthouse

CHARLES CARNEGLIA, : Brooklyn, New York

Defendant. : January 27, 2009

: 9:30 o'clock a.m.

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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE JACK B. WEINSTEIN
UNITED STATES DISTRICT JUDGE, and a jury.

APPEARANCES:

For the Government:

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-and-
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Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 (Trial resumed.)

2 (In the jury room.)

3 THE COURT: Everybody is present.

4 MS. SHARKEY: Your Honor, when we're finished going
5 through the jurors, will we have ten minutes with
6 Mr. Carneglia to talk about the strikes prior to going
7 outside?

8 THE COURT: Sure.

9 We're breaking for lunch at 12:00 o'clock. 12:00 to
10 1:00.

11 MS. SHARKEY: Your Honor, I have another question.

12 THE COURT: Yes.

13 MS. SHARKEY: The weather report for tomorrow
14 morning, depending on what you look at, three to five, four to
15 six or six to eight inches, and a sleet storm.

16 THE COURT: What time does it start?

17 MR. FARBER: Tonight.

18 MS. SHARKEY: And it's supposed to be a sleet storm
19 in the morning.

20 THE COURT: Check with the chief judge and see what
21 his policy is. Tell him I'll conform to the court policy.

22 THE CLERK: Yes, your Honor.

23 THE COURT: Juror one.

24 MR. BURLINGAME: I believe there were three jurors
25 we skipped through yesterday. We went out of order. We would

1 ask that those jurors be taken first today: 71, 10 and 110.

2 THE LAW CLERK: 71, I think, has been excused.

3 10 and 110.

4 THE COURT: All right. Let's have one, please.

5 MS. SHARKEY: Who is coming in first?

6 THE LAW CLERK: Juror Number 1.

7 (Prospective juror enters courtroom.)

8 THE COURT: Good morning. Would you sit down,

9 please.

10 THE PROSPECTIVE JUROR: Hi .

11 THE COURT: Where do you live?

12 THE PROSPECTIVE JUROR: Levittown.

13 THE COURT: You came in how?

14 THE PROSPECTIVE JUROR: Long Island Rail Road.

15 THE COURT: Any problems?

16 THE PROSPECTIVE JUROR: No.

17 THE COURT: What kind of work do you do?

18 THE PROSPECTIVE JUROR: I work in a back office for

19 the New York Stock Exchange, communication.

20 THE COURT: Where, in Manhattan?

21 THE PROSPECTIVE JUROR: Manhattan and Brooklyn.

22 THE COURT: Do you supervise?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: You did follow an OJ trial?

25 THE PROSPECTIVE JUROR: On TV.

1 THE COURT: Which one, the first or the Miami?

2 THE PROSPECTIVE JUROR: The second.

3 THE COURT: The Miami one?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Will that affect your ability in this
6 case?

7 THE PROSPECTIVE JUROR: Not at all.

8 THE COURT: Whatever view you have of whether
9 justice was served or not, you won't be affected by that trial
10 at all here, will you?

11 THE PROSPECTIVE JUROR: No, not at all.

12 THE COURT: Question 60: "Will you be able to
13 consider evidence about racketeering, murder, murder
14 conspiracy and other crimes fairly and impartially in
15 accordance with the instructions of the Court?" You
16 checked "No." Is that a mistake?

17 THE PROSPECTIVE JUROR: That's a mistake.

18 THE COURT: Okay.

19 "Do you understand that an indictment is not
20 evidence?"

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: You checked "No" again. Was that a
23 mistake?

24 THE PROSPECTIVE JUROR: A mistake.

25 THE COURT: Attachment A: "What relationship did you

1 have with Paul Castellano?"

2 THE PROSPECTIVE JUROR: I just heard the name.

3 THE COURT: And John Gotti, Sr.?

4 THE PROSPECTIVE JUROR: The same.

5 THE COURT: And John Gotti, Jr.?

6 THE PROSPECTIVE JUROR: The same.

7 THE COURT: Will that affect your decision here?

8 THE PROSPECTIVE JUROR: Not at all.

9 THE COURT: Can you be fair and impartial?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: Any further questions?

12 MS. SHARKEY: No, your Honor.

13 THE COURT: You are approved. Thank you.

14 THE PROSPECTIVE JUROR: Thank you.

15 (Prospective juror leaves courtroom.)

16 MS. SHARKEY: Our next juror is 30?

17 THE LAW CLERK: Yes.

18 We have one juror who was absent yesterday -- so we

19 had to skip -- who is now here. That's Juror Number 1.

20 Juror Number 110 is still absent.

21 Juror Ten.

22 (Prospective juror enters courtroom.)

23 THE COURT: How are you?

24 THE PROSPECTIVE JUROR: Fine.

25 THE COURT: Where do you live?

1 THE PROSPECTIVE JUROR: I live in Long Island.

2 THE COURT: Where?

3 THE PROSPECTIVE JUROR: West Islip.

4 THE COURT: And you got here how?

5 THE PROSPECTIVE JUROR: Train.

6 THE COURT: Did you have any trouble?

7 THE PROSPECTIVE JUROR: No.

8 THE COURT: You understand that an indictment is not
9 evidence, it's just a way of bringing a case into court?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: And it is to be given no consideration
12 whatsoever?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: Can you decide the case on the evidence
15 and my instruction, do you think?

16 THE PROSPECTIVE JUROR: I think so.

17 THE COURT: Any further questions?

18 MR. FARBER: No.

19 THE COURT: Thank you. You are approved. Thank you
20 very much.

21 THE PROSPECTIVE JUROR: Thank you.

22 (Prospective juror leaves courtroom.)

23 THE LAW CLERK: Next is Juror Number 106.

24 (Prospective juror enters courtroom.)

25 THE COURT: Good morning.

1 THE PROSPECTIVE JUROR: Good morni ng.

2 THE COURT: How are you feeling today?

3 THE PROSPECTIVE JUROR: Before we start, I would
4 like to make a request.

5 THE COURT: Yes.

6 THE PROSPECTIVE JUROR: I have a dermatologi st
7 appointment tomorrow. I would like to be excused tomorrow to
8 go there. I have an outbreak of a skin disorder, and it's
9 bothering me.

10 THE COURT: You are excused from the jury.

11 THE PROSPECTIVE JUROR: Pardon me?

12 THE COURT: You are excused from the jury. We may
13 need you tomorrow, so if you can't be here, I don't want to
14 start wi thout you. I hope you feel better.

15 THE PROSPECTIVE JUROR: I have no objection to
16 coming back afterward. Thursday would be fi ne.

17 MR. BURLINGAME: Can we wait on the weather report?

18 THE PROSPECTIVE JUROR: It's okay with me.

19 THE COURT: You are a very desi rable juror.

20 THE PROSPECTIVE JUROR: I do need to deal with thi s.
21 It's very bad.

22 THE COURT: You're a very desi rable juror.

23 THE PROSPECTIVE JUROR: That surprises me.

24 THE COURT: Take care of your own heal th.

25 THE PROSPECTIVE JUROR: Thank you very much. I

1 appreciate it. Good luck.

2 THE COURT: Good luck to you.

3 THE PROSPECTIVE JUROR: What do I have to do now?

4 THE COURT: You are free.

5 THE PROSPECTIVE JUROR: Just go home? Thank you.

6 Good luck, everybody.

7 (Prospective juror leaves courtroom.)

8 THE LAW CLERK: Next is Juror 113.

9 (Prospective juror enters courtroom.)

10 THE PROSPECTIVE JUROR: Good morning.

11 THE COURT: Good morning. How are you feeling
12 today?

13 THE PROSPECTIVE JUROR: Good. How about you?

14 THE COURT: Good. Where do you live?

15 THE PROSPECTIVE JUROR: Port Washington, Long
16 Island.

17 THE COURT: You take the Port Washington train?

18 THE PROSPECTIVE JUROR: Usually, to the city. Here,
19 I drove.

20 THE COURT: What parking lot? Where did you put
21 your car?

22 THE PROSPECTIVE JUROR: By the diner next door.

23 THE COURT: What do they charge?

24 THE PROSPECTIVE JUROR: I think they are charging
25 17. But I didn't have the coupon yesterday. I guess I'll

1 find out today.

2 THE COURT: Do you know a Frank Russo?

3 THE PROSPECTIVE JUROR: I know a Frank Russo, but I
4 think it's a common name.

5 THE COURT: Who is this Frank Russo?

6 THE PROSPECTIVE JUROR: Frank Russo is a very
7 respected member I know of the Conservative Party. He
8 actually has a cable show in Long Island. So, he's always on
9 TV.

10 THE COURT: That's not the Frank Russo involved.

11 THE PROSPECTIVE JUROR: Okay. Very conservative,
12 religiously, also. I just wanted to make sure.

13 THE COURT: Well, I admire your handwriting.

14 What do you do in the legal field?

15 THE PROSPECTIVE JUROR: I was an attorney practicing
16 up to 1989. I was a corporate attorney doing M&A work, and
17 then I joined Lehman Brothers. I was an attorney there for
18 three years, and switched over to the investment-banking side,
19 financial services.

20 THE COURT: Are you unemployed now?

21 THE PROSPECTIVE JUROR: I am unemployed now,
22 unfortunately, after Lehman's bankruptcy, after twenty-two
23 years there, and I am looking for a job.

24 I want to do my duty, and at the same time, I know
25 this is going to be difficult, because I have, for example, a

1 major interview tentatively scheduled for Thursday. It's very
2 difficult to try to get a job in this market. I am sure you
3 heard, 65,000 more jobs yesterday.

4 THE COURT: All right. You are excused.

5 THE PROSPECTIVE JUROR: Thank you, your Honor.

6 MS. SHARKEY: Good luck.

7 THE PROSPECTIVE JUROR: Thank you.

8 MR. FARBER: Good luck.

9 (Prospective juror leaves courtroom.)

10 THE LAW CLERK: This is Juror Number 84.

11 (Prospective juror enters courtroom.)

12 THE COURT: Sit down, won't you, madam?

13 THE PROSPECTIVE JUROR: Thank you.

14 THE COURT: How are you feeling this morning?

15 THE PROSPECTIVE JUROR: Very good, your Honor.

16 THE COURT: Did you have trouble getting to court?

17 THE PROSPECTIVE JUROR: Not at all.

18 THE COURT: Where do you live?

19 THE PROSPECTIVE JUROR: Brooklyn, New York.

20 THE COURT: Where?

21 THE PROSPECTIVE JUROR: Ralph Avenue, Ralph and

22 Tilden.

23 THE COURT: So, you come how, by bus?

24 THE PROSPECTIVE JUROR: Bus and train.

25 THE COURT: Do you work?

1 THE PROSPECTIVE JUROR: Yes, I do.

2 THE COURT: What kind of work?

3 THE PROSPECTIVE JUROR: I'm in day care, day care
4 provider, Friends of Crown Heights Educational Center.

5 THE COURT: Okay.

6 Is that a city-funded organization?

7 THE PROSPECTIVE JUROR: Yes, it is, Judge. Yes.

8 THE COURT: There are sharp limits on what they pay?

9 THE PROSPECTIVE JUROR: Excuse me?

10 THE COURT: They don't pay that much?

11 THE PROSPECTIVE JUROR: Not that much, Judge.

12 THE COURT: You testified in a divorce proceeding?

13 THE PROSPECTIVE JUROR: Yes, I did. I am divorced.

14 THE COURT: But never in a criminal proceeding?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: You knew somebody who was murdered?

17 THE PROSPECTIVE JUROR: Yes, unfortunately.

18 THE COURT: Close to you?

19 THE PROSPECTIVE JUROR: Well, I taught him in Sunday
20 School, was in my Sunday School class.

21 THE COURT: How old was he when he was murdered?

22 THE PROSPECTIVE JUROR: He was about twenty-two.

23 THE COURT: You don't know what happened to the case
24 thereafter?

25 THE PROSPECTIVE JUROR: No, Judge.

1 THE COURT: Will that affect your ability to try
2 this case?

3 THE PROSPECTIVE JUROR: Excuse me?

4 THE COURT: Will that affect your ability to be a
5 juror?

6 THE PROSPECTIVE JUROR: No, not at all.

7 THE COURT: Can you be fair and impartial?

8 THE PROSPECTIVE JUROR: Very much, so, your Honor.

9 THE COURT: Any questions?

10 MR. BURLINGAME: No, your Honor.

11 MS. SHARKEY: No, your Honor.

12 THE COURT: You are approved. Thank you very much.

13 THE PROSPECTIVE JUROR: Thank you.

14 (Prospective juror leaves courtroom.)

15 THE LAW CLERK: Juror 48.

16 (Prospective juror enters courtroom.)

17 THE COURT: Good morning. How are you?

18 THE PROSPECTIVE JUROR: Good, sir. How are you?

19 THE COURT: Where do you live?

20 THE PROSPECTIVE JUROR: Forest Hills, Queens.

21 THE COURT: Do you take the train or the railroad to
22 get here?

23 THE PROSPECTIVE JUROR: I drive.

24 THE COURT: You drive?

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: And then park here?

2 THE PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: What business are you in?

4 THE PROSPECTIVE JUROR: I'm in retail.

5 THE COURT: Which?

6 THE PROSPECTIVE JUROR: Home Depot.

7 THE COURT: You are with Home Depot?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: They had a big announcement yesterday.

10 THE PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Were you in that division?

12 THE PROSPECTIVE JUROR: No, sir.

13 THE COURT: Good.

14 What is your connection to Gotti, Sr. or Gotti, Jr.?

15 THE PROSPECTIVE JUROR: Just through the news,
16 through the paper.

17 THE COURT: Can you be fair and impartial in this
18 case?

19 THE PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Any questions?

21 MS. SHARKEY: No, your Honor.

22 MR. BURLINGAME: No, your Honor.

23 THE COURT: You are approved. Thank you.

24 THE PROSPECTIVE JUROR: Thank you.

25 (Prospective juror leaves courtroom.)

1 THE COURT: Next.

2 THE LAW CLERK: We are on Juror No. 83.

3 (Prospective juror enters courtroom.)

4 THE COURT: Good morning.

5 THE PROSPECTIVE JUROR: Good morning.

6 THE COURT: How are you?

7 THE PROSPECTIVE JUROR: Fine. How are you?

8 THE COURT: Fine, thank you.

9 Where are you living now?

10 THE PROSPECTIVE JUROR: Nassau County.

11 THE COURT: Where?

12 THE PROSPECTIVE JUROR: Uniondale.

13 THE COURT: Do you drive?

14 THE PROSPECTIVE JUROR: No. I took the railroad.

15 THE COURT: Any trouble?

16 THE PROSPECTIVE JUROR: No. No.

17 THE COURT: Was your jury service as a grand juror
18 or a petit juror?

19 THE PROSPECTIVE JUROR: Petit juror.

20 THE COURT: What kind of case was it?

21 THE PROSPECTIVE JUROR: It was a case involving a
22 town electrician doing jobs that were not --

23 THE COURT: Was that civil or criminal?

24 THE PROSPECTIVE JUROR: They said criminal.

25 THE COURT: Stealing public property and time?

1 THE PROSPECTIVE JUROR: Hmm.

2 THE COURT: Will that affect your verdict here?

3 THE PROSPECTIVE JUROR: No.

4 THE COURT: Your brother-in-law worked for who?

5 THE PROSPECTIVE JUROR: Right now. He's working for
6 the Police Department.

7 THE COURT: In New York City?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Will that affect your decision?

10 THE PROSPECTIVE JUROR: Oh, no. I rarely see him.

11 THE COURT: Do you know what division he's in?

12 THE PROSPECTIVE JUROR: No. I'm not sure.

13 THE COURT: Any further questions?

14 MS. SHARKEY: No, your Honor.

15 MR. BURLINGAME: No, your Honor.

16 THE COURT: You are approved. Thank you.

17 THE PROSPECTIVE JUROR: Thank you.

18 (Prospective juror leaves courtroom.)

19 THE LAW CLERK: Juror Number 66.

20 (Prospective juror enters courtroom.)

21 THE COURT: Good morning. How are you?

22 THE PROSPECTIVE JUROR: Good morning. Fine, thank
23 you.

24 THE COURT: Sit down, please.

25 Did you have any trouble getting in this morning?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Where do you live?

3 THE PROSPECTIVE JUROR: Springfield Gardens.

4 THE COURT: You took what, the train to get in?

5 THE PROSPECTIVE JUROR: I took the bus and the
6 train.

7 THE COURT: Who was it that was charged with a
8 crime? You say a family member or close friend has been
9 charged.

10 THE PROSPECTIVE JUROR: That was me.

11 THE COURT: It was you. What kind of crime was it?

12 THE PROSPECTIVE JUROR: Violence. Fighting.

13 THE COURT: How long ago?

14 THE PROSPECTIVE JUROR: About five or six years ago.

15 THE COURT: And it was dismissed?

16 THE PROSPECTIVE JUROR: Dismissed and sealed.
17 Stupid thing.

18 THE COURT: Your aunt was murdered?

19 THE PROSPECTIVE JUROR: Yes.

20 THE COURT: When was that?

21 THE PROSPECTIVE JUROR: Oh, way back. I was about
22 eight years old or something like that.

23 THE COURT: Did they find the defendant?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: And what happened to him?

1 THE PROSPECTIVE JUROR: He was hung.

2 THE COURT: He was executed?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: What state was that?

5 THE PROSPECTIVE JUROR: That's Tri ni dad.

6 THE COURT: In Tri ni dad?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: They still use hang ing?

9 THE PROSPECTIVE JUROR: No. They stopped it for a
10 while. At that time, they used to.

11 THE COURT: Will that affect your deci sion in this
12 case?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: Can you be fair and impar tial?

15 THE PROSPECTIVE JUROR: Yes, I can.

16 THE COURT: Do you have any feeling about that
17 arrest, that you were treated unfairly or anything like that?

18 THE PROSPECTIVE JUROR: No. Drunk and stup id.

19 THE COURT: Any further questions?

20 MS. SHARKEY: No, your Honor.

21 MR. BURLINGAME: No, your Honor.

22 THE COURT: Okay. You are approved.

23 THE PROSPECTIVE JUROR: Thank you.

24 (Prospective juror leaves courtroom.)

25 THE LAW CLERK: This is Juror Number 42.

1 (Prospective juror enters courtroom.)

2 THE COURT: Good morning.

3 THE PROSPECTIVE JUROR: Good morning. How are you?

4 THE COURT: Fine.

5 Where do you live?

6 THE PROSPECTIVE JUROR: In Woodburg, Woodmere area,
7 Five Towns.

8 THE COURT: You have a problem?

9 THE PROSPECTIVE JUROR: I'm going away in March.

10 THE COURT: March what?

11 THE PROSPECTIVE JUROR: March 23. That, I first
12 wanted to give to you. You said six to eight weeks. If that
13 would be a conflict.

14 THE COURT: We should be finished by then.

15 You are going to Trinidad?

16 THE PROSPECTIVE JUROR: Punta Cana.

17 THE COURT: Punta Cana?

18 THE PROSPECTIVE JUROR: Punta Cana, Dominican
19 Republic.

20 THE COURT: Excuse me.

21 Your sister is an attorney?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: What kind of practice does she have?

24 THE PROSPECTIVE JUROR: Litigating attorney, and
25 she's in private practice.

1 THE COURT: Criminal?

2 THE PROSPECTIVE JUROR: Criminal, yes.

3 THE COURT: Where?

4 THE PROSPECTIVE JUROR: She works in Brooklyn. And
5 now she's also out in Nassau.

6 THE COURT: Will that affect your decision here.

7 THE PROSPECTIVE JUROR: It could, possibly.

8 THE COURT: Why?

9 THE PROSPECTIVE JUROR: Well, I mean, I listen to
10 all her cases. She's my younger sister. It's been quite a
11 ride with her, going through her certain trials and so forth.

12 THE COURT: Is she defense or prosecution?

13 THE PROSPECTIVE JUROR: She does prosecution.

14 THE COURT: What District Attorney does she work
15 for?

16 THE PROSPECTIVE JUROR: I'm not sure.

17 THE COURT: Where is she now, in Nassau?

18 THE PROSPECTIVE JUROR: Now, she's in Nassau.

19 THE COURT: As a prosecutor?

20 THE PROSPECTIVE JUROR: Right.

21 THE COURT: And she discusses her cases?

22 THE PROSPECTIVE JUROR: Well, not all the time. She
23 has, through the course of years.

24 THE COURT: Can you put those discussions out of
25 your mind?

1 THE PROSPECTIVE JUROR: Some of them, there have
2 been some interesting cases.

3 THE COURT: Do you think it might affect your
4 verdict?

5 THE PROSPECTIVE JUROR: Possibly.

6 THE COURT: Why don't you wait outside a moment,
7 please.

8 THE PROSPECTIVE JUROR: Sure.

9 (Prospective juror leaves courtroom.)

10 THE COURT: Any objection to her?

11 MS. SHARKEY: Yes, your Honor.

12 THE COURT: You are objecting?

13 MS. SHARKEY: I'm asking that she be excused for
14 cause.

15 MR. BURLINGAME: Judge, I ask that you follow up a
16 little bit more formally. It was kind of free form. If you
17 ask specific questions of, Could you follow my instructions?,
18 Would you be able to decide the case based on just what's
19 present in the courtroom?, I think -- she appears very
20 straightforward.

21 THE COURT: All right. Bring her in.

22 MS. SHARKEY: Judge, I think this particular juror
23 has said that she's followed her younger sister's cases over
24 the course of the years, she was a prosecutor both in Brooklyn
25 and now in Nassau.

1 I think her first answer was her most candid answer.
2 You specifically asked her if she could put those aside. She
3 said, I could try. I don't think so. She also said that she
4 didn't think she could be fair.

5 THE COURT: I'm going to further inquire. Counsel
6 is entitled to an inquiry.

7 (Prospective juror enters courtroom.)

8 THE COURT: What was the most interesting case she
9 ever discussed with you?

10 THE PROSPECTIVE JUROR: I think it was a car
11 accident, that was quite interesting, actually.

12 THE COURT: Ever discuss a murder case?

13 THE PROSPECTIVE JUROR: With her? No.

14 THE COURT: Cases with alleged mob connections?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: "Do you or a relative work for
17 government agencies, police or sheriff's departments?"

18 You wrote "Yes," and I can't read it.

19 THE PROSPECTIVE JUROR: Police? I never worked for
20 the police.

21 THE COURT: Who did you work for?

22 THE PROSPECTIVE JUROR: I'm on the Board of
23 Education.

24 THE COURT: That was the only government agency?

25 THE PROSPECTIVE JUROR: Right.

1 THE COURT: Okay.

2 You were held up at gunpoint?

3 THE PROSPECTIVE JUROR: In my father's pharmacy,
4 yes.

5 THE COURT: When was that?

6 THE PROSPECTIVE JUROR: Probably about -- how old am
7 I? Say, thirty years ago. No. Twenty-five years ago.

8 THE COURT: Will that affect your decision here?

9 THE PROSPECTIVE JUROR: It was not a pleasant
10 situation. It could. It could. It could. It was quite a
11 scary situation.

12 THE COURT: How old were you when that happened?

13 THE PROSPECTIVE JUROR: Twenty-five, I think.

14 THE COURT: You say you're very sensitive to people
15 involved in drugs?

16 THE PROSPECTIVE JUROR: Hmm. Well, because I'm on
17 the Board of Ed and I'm involved in a lot of wellness and
18 drug-awareness programs.

19 THE COURT: You understand that the defendant is
20 accused, he hasn't been proven to be connected with drugs; do
21 you understand that?

22 THE PROSPECTIVE JUROR: Yes. Yes.

23 THE COURT: Well, do you think that the indictment
24 that a person is involved with drugs would have any weight
25 with you?

1 THE PROSPECTIVE JUROR: It could. Quite frankly,
2 you know, after last Wednesday, I Googled the defendant, and
3 it was quite interesting.

4 THE COURT: You did Google the defendant?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: You are excused. Thank you.

7 (Prospective juror leaves courtroom.)

8 THE COURT: Jurors like that could save us a lot of
9 time. We won't have any trials. We can do it on Google.

10 THE LAW CLERK: Juror Number 21.

11 MR. FARBER: What happened to 42? Oh. That's the
12 one we just did.

13 (Prospective juror enters courtroom.)

14 THE COURT: Good morning.

15 THE PROSPECTIVE JUROR: Good morning.

16 THE COURT: How are you?

17 THE PROSPECTIVE JUROR: Before I get started, I
18 forgot to tell the judge that I'm on medication and it might
19 make me sleepy during trial.

20 THE COURT: What's the medication?

21 THE PROSPECTIVE JUROR: Hyzaar.

22 (Prospective juror leaves courtroom.)

23 THE COURT: Juror No. 68 has to be taken out of
24 turn, because he has to pick up his kids from school.

25 All right. Bring in Juror Number 68.

1 THE LAW CLERK: 68?

2 THE COURT: Yes.

3 THE LAW CLERK: 68 in order, and it's Juror
4 Number 75.

5 MR. FARBER: Juror Number 75 is 23.

6 THE LAW CLERK: It's Juror Number 78. They are 68
7 in the order. It's Juror Questionnaire 75.

8 MS. SHARKEY: Number 78 in the order.

9 (Prospective juror enters courtroom.)

10 THE COURT: Good morning, sir.

11 THE PROSPECTIVE JUROR: Good morning.

12 THE COURT: You have to pick up your child today?

13 THE PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: You have to do that every day?

15 THE PROSPECTIVE JUROR: Yes. Today, he's on a test
16 from the school to the college. That's why I have to pick
17 him.

18 THE COURT: What about other days? Sometimes you
19 have to pick up?

20 THE PROSPECTIVE JUROR: When it's an emergency,
21 anything, he can't go, and then I pick him.

22 THE COURT: How old is the child?

23 THE PROSPECTIVE JUROR: He's going to college. He's
24 eighteen.

25 THE COURT: But you have to pick him up?

1 THE PROSPECTIVE JUROR: Yes, sir. Otherwise, he
2 missed the class. He has a test today from his school to
3 college. Today and tomorrow, they have it.

4 THE COURT: Who do you work for?

5 THE PROSPECTIVE JUROR: I work for construction
6 painting.

7 THE COURT: You do city jobs?

8 THE PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: It's not your company?

10 THE PROSPECTIVE JUROR: Yes.

11 THE COURT: It's your company itself?

12 THE PROSPECTIVE JUROR: Yes, sir. I do the housing.

13 THE COURT: You bid for the jobs?

14 THE PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: How many people do you have working for
16 you?

17 THE PROSPECTIVE JUROR: Two people. Now, the city
18 no money, they don't have the bid.

19 THE COURT: Would you be able to lose six weeks of
20 work?

21 THE PROSPECTIVE JUROR: Yes. Now, no bid. It was
22 500,000, 600,000, like that. Now, they give the bid only for
23 cold cases, emergency.

24 THE COURT: So, you don't have work?

25 THE PROSPECTIVE JUROR: No.

1 THE COURT: You wouldn't mind being a juror?

2 THE PROSPECTIVE JUROR: I try.

3 THE COURT: Could you be impartial in a case where
4 the charge was murder and conspiracy?

5 THE PROSPECTIVE JUROR: No.

6 THE COURT: Could you be fair in such a case?

7 THE PROSPECTIVE JUROR: That case is, I have to know
8 what's going on.

9 THE COURT: Could you decide it on the facts in
10 court and my instructions only?

11 THE PROSPECTIVE JUROR: Of course. Yes, sir.

12 THE COURT: You know that a charge is not evidence
13 of guilt at all, the defendant is presumed to be innocent?

14 Do you understand that now?

15 THE PROSPECTIVE JUROR: No, sir.

16 THE COURT: He has to be assumed to be innocent,
17 like you.

18 THE PROSPECTIVE JUROR: No, he's not guilty. How
19 come? He's innocent people. He's a nice man. "Innocent"
20 means he's a good man, not guilty.

21 THE COURT: But you have to assume he's a good man
22 until he's proven guilty --

23 THE PROSPECTIVE JUROR: Yes, to prove.

24 THE COURT: -- beyond a reasonable doubt.

25 THE PROSPECTIVE JUROR: They should prove he's

1 innocent.

2 THE COURT: Who has to prove he's innocent, the
3 defendant or the government?

4 THE PROSPECTIVE JUROR: The both.

5 THE COURT: Both?

6 THE PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: The defendant has a burden, do you
8 think, to prove something?

9 THE PROSPECTIVE JUROR: No. If he's guilty, he
10 should get punished, if guilty.

11 THE COURT: I see.

12 Could you wait outside a moment --

13 THE PROSPECTIVE JUROR: Sure.

14 THE COURT: -- while we discuss this further?

15 THE PROSPECTIVE JUROR: Sure.

16 (Prospective juror leaves courtroom.)

17 THE COURT: I don't think he has a clear conception.

18 MR. FARBER: I agree.

19 MR. BURLINGAME: I agree.

20 THE COURT: Excused.

21 THE LAW CLERK: Next juror is Juror Number 46.

22 (Prospective juror enters courtroom.)

23 THE COURT: Good morning.

24 THE PROSPECTIVE JUROR: Good morning.

25 THE COURT: How are you feeling today?

1 THE PROSPECTIVE JUROR: I'm all right.

2 THE COURT: Good.

3 THE PROSPECTIVE JUROR: Good.

4 THE COURT: Where do you live?

5 THE PROSPECTIVE JUROR: Jamaica Estates in Jamaica,
6 Queens.

7 THE COURT: And how do you get here?

8 THE PROSPECTIVE JUROR: Public transportation.

9 THE COURT: What does that mean, bus or train?

10 THE PROSPECTIVE JUROR: I took the train this
11 morning.

12 THE COURT: How long does it take?

13 THE PROSPECTIVE JUROR: Excuse me?

14 THE COURT: How long does that take?

15 THE PROSPECTIVE JUROR: I left around 7:00 o'clock.
16 I got here about 8:30.

17 THE COURT: Did you have a cup of coffee down in the
18 cafeteria?

19 THE PROSPECTIVE JUROR: No. I'm not a coffee
20 drinker. I would rather drink juice, health-wise.

21 THE COURT: You are right.

22 What are your two jobs?

23 THE PROSPECTIVE JUROR: I'm a school teacher. I
24 teach science right now to elementary schools. And my evening
25 job, I was working at Macy's as a fur consultant, and I quit

1 that recently, because it was like too much.

2 THE COURT: Well, what's going to happen to your
3 students while you're on jury duty?

4 THE PROSPECTIVE JUROR: Right now, they hire a
5 substitute.

6 THE COURT: So, that's not a big concern?

7 THE PROSPECTIVE JUROR: That's not a problem, no.

8 THE COURT: Now, if I told you not to discuss the
9 case with anybody, could you follow my instructions?

10 THE PROSPECTIVE JUROR: Yes. I don't know anything
11 about the case, because I have not been reading the
12 newspapers.

13 THE COURT: You checked "No" on that. Was that a
14 mistake on your part?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Can you be a fair and impartial juror,
17 do you think?

18 THE PROSPECTIVE JUROR: Yes, I can.

19 THE COURT: Any questions?

20 MS. SHARKEY: No, your Honor.

21 MR. BURLINGAME: Yes, your Honor.

22 THE COURT: Does anything make you nervous here
23 particularly?

24 THE PROSPECTIVE JUROR: No. Right now? You sense a
25 body language that I'm nervous? Well, I feel like I'm sitting

1 before everybody. I'm okay. It's okay. It's a natural
2 thing. Everybody goes through that. But I'm not terribly
3 nervous.

4 THE COURT: Good. Okay. You are approved as a
5 juror. You can wait outside.

6 THE PROSPECTIVE JUROR: Thank you.

7 THE COURT: Ms. Lowe will tell you what to do.

8 (Prospective juror leaves courtroom.)

9 THE COURT: Who is our next juror?

10 THE LAW CLERK: Juror Number 94, your Honor.

11 (Prospective juror enters courtroom.)

12 THE COURT: Good morning. How are you feeling?

13 THE PROSPECTIVE JUROR: Not great.

14 THE COURT: What's the problem?

15 THE PROSPECTIVE JUROR: Well, I'm very nervous.

16 THE COURT: Why are you nervous?

17 THE PROSPECTIVE JUROR: Well, this is not something
18 that's been very easy for me.

19 THE COURT: Why?

20 THE PROSPECTIVE JUROR: It's a very sinister
21 environment for me to be in. It's very frightening for me.

22 THE COURT: The court is frightening?

23 THE PROSPECTIVE JUROR: Yes. And this whole story.
24 I don't think my heartbeat is right since Thursday.

25 THE COURT: Okay. You are excused.

1 THE PROSPECTIVE JUROR: Thank you.

2 (Prospective juror leaves courtroom.)

3 THE COURT: Based on the juror's demeanor, she would
4 not be able to survive the trial.

5 THE LAW CLERK: Juror Number 89.

6 (Prospective juror enters courtroom.)

7 THE COURT: Good morning. How are you?

8 THE PROSPECTIVE JUROR: Fine.

9 THE COURT: How are you feeling today?

10 THE PROSPECTIVE JUROR: Okay.

11 THE COURT: Good.

12 Where do you live?

13 THE PROSPECTIVE JUROR: Whitestone, Queens.

14 THE COURT: How do you get here?

15 THE PROSPECTIVE JUROR: Public transportation, the
16 7 train, 2, 3.

17 THE COURT: Now, in answer to Question 84B: "Do you
18 have feelings about a witness seeking a reduced sentence by
19 cooperating that would make it difficult for you to fairly and
20 impartially consider that testimony or to render a guilty
21 verdict based on the testimony of such a witness?, " you
22 wrote "Yes," and your explanation was: "A witness with such a
23 motive would in my mind be less credible."

24 THE PROSPECTIVE JUROR: I did say that, yes.

25 THE COURT: But would you follow my instructions on

1 how to treat such witnesses?

2 THE PROSPECTIVE JUROR: I am sure. I am following
3 your instructions. It's just the weight given to that
4 testimony. That's how I feel about it.

5 THE COURT: But you could believe such a witness?

6 THE PROSPECTIVE JUROR: I would not outright not
7 believe it, but weighing that testimony versus other
8 testimony, not quite the same in my mind.

9 THE COURT: Any other questions?

10 Thank you.

11 THE COURT: Can you be a fair and impartial juror,
12 do you think?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: You are approved. Thank you.

15 (Prospective juror leaves courtroom.)

16 (Continued on next page.)

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1 THE CLERK: 118, Your Honor.

2 (Juror present.)

3 THE COURT: Good morni ng.

4 THE PROSPECTIVE JUROR: Good morni ng.

5 THE COURT: Face me, pl ease.

6 Are you nervous?

7 THE PROSPECTIVE JUROR: No. Just very tired.

8 THE COURT: Why?

9 THE PROSPECTIVE JUROR: I worked last night.

10 THE COURT: What kind of work do you do?

11 THE PROSPECTIVE JUROR: I work at a televisi on
12 production company. I work as an assistant editor.

13 THE COURT: Do you plan to do that while you are
14 sitting as a juror?

15 THE PROSPECTIVE JUROR: I have to.

16 THE COURT: You have to?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: You need the work?

19 THE PROSPECTIVE JUROR: I'm sorry?

20 THE COURT: Do you need the work, is that why?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: You are excused.

23 THE PROSPECTIVE JUROR: Thank you.

24 (Juror leaves jury room.)

25 THE CLERK: Juror 14 is next. Juror 14.

1 (Juror present.)

2 THE COURT: Good morni ng.

3 THE PROSPECTIVE JUROR: Good morni ng.

4 THE COURT: How are you today?

5 THE PROSPECTIVE JUROR: Fine. And you?

6 THE COURT: Good.

7 Did you have any problems getting in today.

8 THE PROSPECTIVE JUROR: No.

9 THE COURT: What kind of work do you do?

10 THE PROSPECTIVE JUROR: I am a store manager.

11 THE COURT: What kind of store?

12 THE PROSPECTIVE JUROR: Radi oShack.

13 THE COURT: Is Radi oShack having trouble with
14 busi ness?

15 THE PROSPECTIVE JUROR: No, no, we are not.

16 THE COURT: You are in good shape?

17 THE PROSPECTIVE JUROR: Yes.

18 THE COURT: Unusual , ri ght?

19 THE PROSPECTIVE JUROR: Yes, it is.

20 THE COURT: You've got your figures crossed?

21 THE PROSPECTIVE JUROR: No. We are pretty good
22 ri ght now.

23 THE COURT: What neighborhood is it in?

24 THE PROSPECTIVE JUROR: Cobbl e Hi ll.

25 THE COURT: That's an upscale area, isn't it? Now

1 it is anyway.

2 Well, we are glad to have you and you are approved
3 as a juror.

4 THE PROSPECTIVE JUROR: Okay. Thank you.
5 Go back out?

6 THE COURT: Yes. Ms. Lowe will tell you where.
7 (Juror leaves courtroom.)

8 THE CLERK: Next is juror 82.
9 (Juror present.)

10 THE COURT: Good morning.

11 THE PROSPECTIVE JUROR: Hi. How are you?

12 THE COURT: Fine. How are you feeling today?

13 THE PROSPECTIVE JUROR: How am I feeling? Fine.

14 THE COURT: You look chipper.

15 THE PROSPECTIVE JUROR: I am always chipper.

16 THE COURT: Full of energy.

17 THE PROSPECTIVE JUROR: Excuse me?

18 THE COURT: Full of energy?

19 THE PROSPECTIVE JUROR: I hope so, yes.

20 THE COURT: Good.

21 THE PROSPECTIVE JUROR: My job.

22 THE COURT: You were a juror in a theft case?

23 THE PROSPECTIVE JUROR: No. No. I wasn't really a
24 juror. I ended up getting off the trial.

25 THE COURT: So you never served?

1 THE PROSPECTIVE JUROR: No. They just asked me
2 questions. Then they said, sorry, you are out.

3 THE COURT: I see. Okay.

4 You understand that any evidence that you receive in
5 this case will have been found by the Court, or another Court,
6 to be legally obtained and introduced?

7 THE PROSPECTIVE JUROR: Yes.

8 THE COURT: So you don't have to worry about that
9 problem. Right?

10 THE PROSPECTIVE JUROR: Right.

11 THE COURT: Can you follow that instruction?

12 THE PROSPECTIVE JUROR: I can follow it.

13 I just wanted to find out though. This is -- I
14 don't get paid for work. Can I tell you why I really
15 shouldn't be serving? I'm an independent contractor and if,
16 say, a job comes in, because I am a clown, I have to take the
17 job. That's how I make money.

18 THE COURT: What kind of contract --

19 THE PROSPECTIVE JUROR: I actually work for an
20 entertainment company. I don't get paid if I don't work.

21 THE COURT: What kind of company?

22 THE PROSPECTIVE JUROR: Entertainment.

23 THE COURT: Entertainment?

24 THE PROSPECTIVE JUROR: Yes.

25 So I have to go pretty much job by job. I actually

1 got asked to do a job next Monday and Tuesday to be a clown.
2 I went to clown college. If I don't take the job, I could
3 lose like \$500 a day.

4 THE COURT: All right. You are excused.

5 Thank you.

6 THE PROSPECTIVE JUROR: Excuse me?

7 THE COURT: I am excusing you.

8 THE PROSPECTIVE JUROR: Okay. Thanks.

9 THE COURT: You can take your job.

10 THE PROSPECTIVE JUROR: If you need a clown, I can
11 help you out.

12 Good luck. Thanks.

13 (Juror leaves jury room.)

14 MR. BURLINGAME: She has the right profession.

15 THE CLERK: Juror 47.

16 THE COURT: I caution you to keep a straight face in
17 these proceedings.

18 (Juror present.)

19 THE COURT: Nice to see you.

20 Did you have any trouble getting here today?

21 THE PROSPECTIVE JUROR: Not at all.

22 THE COURT: Where do you live?

23 THE PROSPECTIVE JUROR: I -- I recently just moved
24 to Brooklyn, from Franklin Square, Long Island, over the past
25 weekend.

1 THE COURT: Where, what part?

2 THE PROSPECTIVE JUROR: Sheepshead Bay.

3 THE COURT: That's a nice area.

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: An apartment house?

6 THE PROSPECTIVE JUROR: We are renting from family.

7 Because I work in Brooklyn, to be closer to work.

8 THE COURT: I see.

9 What kind of a house is it?

10 THE PROSPECTIVE JUROR: It's a one -- a single
11 family home.

12 THE COURT: You are renting --

13 THE PROSPECTIVE JUROR: We rent from the basement.

14 THE COURT: The basement?

15 THE PROSPECTIVE JUROR: Yes.

16 THE COURT: Do you have children?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: Your husband's brother-in-law is a Port
19 Authority policeman?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Will that affect your verdict in any
22 way?

23 THE PROSPECTIVE JUROR: No. He doesn't really
24 discuss work much.

25 THE COURT: I see.

1 Can you be a fair and impartial juror?

2 THE PROSPECTIVE JUROR: I believe so, yes.

3 THE COURT: Any further questions?

4 MS. SHARKEY: No.

5 MR. BURLINGAME: No, Judge.

6 THE COURT: You are approved. We are happy to have
7 you.

8 THE PROSPECTIVE JUROR: Thank you.

9 (Juror leaves jury room.)

10 THE COURT: Levity will upset some of these jurors.
11 They will think you are laughing at them.

12 THE CLERK: Juror two is next.

13 THE LAW CLERK: Two isn't here. So we have 33.

14 THE CLERK: Two is not here.

15 This is 33.

16 MS. SHARKEY: Thank you.

17 THE CLERK: Juror 33 is coming in.

18 THE COURT: Thank you.

19 (Juror present.)

20 THE COURT: Good morning.

21 Sit down here, won't you, please, sir?

22 Did you have any trouble getting in this morning?

23 THE PROSPECTIVE JUROR: No, I did not.

24 THE COURT: The book you are reading is called
25 Guilty, by Ann Coulter, C O U L T E R?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Any good?

3 THE PROSPECTIVE JUROR: Not bad.

4 THE COURT: Do you understand this defendant is
5 presumed to be innocent?

6 THE PROSPECTIVE JUROR: Right.

7 THE COURT: And the government has the burden of
8 proving him guilty beyond a reasonable doubt?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Do you work for a government agency?

11 THE PROSPECTIVE JUROR: Not now, no.

12 THE COURT: When did you?

13 THE PROSPECTIVE JUROR: I didn't. I worked for a
14 labor union, fifteen years ago.

15 THE COURT: I see.

16 What are you doing now?

17 THE PROSPECTIVE JUROR: I work for a -- a
18 wholesaler, supply house.

19 THE COURT: You have brothers-in-law who were --

20 THE PROSPECTIVE JUROR: Two brothers-in-law that are
21 New York City cops and a sister-in-law that's a retired New
22 York City cop.

23 THE COURT: Will that affect your decision here?

24 THE PROSPECTIVE JUROR: Possibly.

25 THE COURT: Why?

1 THE PROSPECTIVE JUROR: I -- I would say I'm biased.

2 THE COURT: Biased in what way?

3 THE PROSPECTIVE JUROR: In what way? I've -- I've
4 read a lot of stories. I know, you know, what this guy is
5 charged with, and I -- I don't think I could be fair.

6 THE COURT: You are excused.

7 Thank you.

8 (Juror leaves jury room.)

9 THE CLERK: Juror 32.

10 (Juror present.)

11 THE COURT: Good morning.

12 How are you? How are you feeling?

13 THE PROSPECTIVE JUROR: Good. All right.

14 THE COURT: What business are you in?

15 THE PROSPECTIVE JUROR: I'm in medical distribution.
16 I work for a medical company.

17 THE COURT: What kind of medical products?

18 THE PROSPECTIVE JUROR: DME equipment for patients
19 that are discharged from the hospital.

20 THE COURT: Is that under Medicare and Medicaid
21 usually?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: Chairs and things like that?

24 THE PROSPECTIVE JUROR: Wheel chairs, hospital beds,
25 things like that.

1 I don't know if this is relevant because I didn't
2 have a question for it. I don't know if this would be -- make
3 me a bad person for a jury. But I have been arrested, for
4 marijuana distribution, a long time ago. So --

5 THE COURT: What happened to the case?

6 THE PROSPECTIVE JUROR: I was like seventeen and it
7 got thrown out.

8 And I got arrested for it again when I was eighteen.
9 So I don't know if --

10 THE COURT: What happened to that case?

11 THE PROSPECTIVE JUROR: It got thrown out again.
12 But --

13 THE COURT: Will that affect your decision here?

14 THE PROSPECTIVE JUROR: It -- I can't -- I can't say
15 for sure. I can't say for sure. But, you know, I have been
16 there, you know, so I don't know if I can give the best
17 judgment.

18 THE COURT: Do you have any resentment to the
19 prosecutor or the police as a result of that?

20 THE PROSPECTIVE JUROR: They were doing their job,
21 you know. I was definitely doing something I wasn't supposed
22 to be doing clearly. But I don't -- you know, I --

23 THE COURT: Well, evaluating yourself, do you think
24 you could be a fair and impartial juror in this case?

25 THE PROSPECTIVE JUROR: I don't know because I've

1 never done this before so I don't know how it would be. I --
2 I would do the best that I could considering, but I don't know
3 if, you know, if hearing all the questions and hearing all of
4 the situations, if I can say fairly if I think that, you know,
5 everything that the defendant did was totally wrong because I
6 did it, now. So it's like --

7 THE COURT: Would you follow my instructions on what
8 is wrong and what is right?

9 THE PROSPECTIVE JUROR: Yes. I would, yes.

10 THE COURT: And how you should evaluate the
11 evidence?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: And decide solely on the evidence in the
14 case?

15 THE PROSPECTIVE JUROR: Yes. To the best of my
16 ability.

17 THE COURT: And the law as I give it to you?

18 THE PROSPECTIVE JUROR: A hum.

19 THE COURT: When you say "a hum," what does that
20 mean?

21 THE PROSPECTIVE JUROR: Yes. That means I would do
22 the best I can. But like I said, I don't know if you'd, you
23 know --

24 THE COURT: Yes. None of us know how we are going
25 to react in a strange situation for sure.

1 There may be some evidence about marijuana
2 distribution in this case. Would that prevent you from being
3 fair and impartial?

4 THE PROSPECTIVE JUROR: Like I -- I don't know. I
5 can't say, you know, because I -- I grew up around that, you
6 know. I grew up around those types of people and I put --
7 like I grew up in Bayside. Right now I live in Ozone Park
8 which is right next to Howard Beach. I go to the gym in
9 Howard Beach, so that's -- that neighborhood. So I don't know
10 how comfortable I'd feel, but like -- I would do the best I
11 could, but I -- I probably wouldn't feel so comfortable, you
12 know.

13 THE COURT: You would feel uncomfortable, do you
14 think?

15 THE PROSPECTIVE JUROR: Yes, a little bit because
16 I'm there. I live -- I don't know if you are familiar with
17 the neighborhood.

18 THE COURT: I understand.

19 THE PROSPECTIVE JUROR: That's where I --

20 THE COURT: Could you wait outside just a second?

21 THE PROSPECTIVE JUROR: Sure. All right.

22 (Juror leaves jury room.)

23 MS. SHARKEY: I think the juror should be seated.
24 He said he'd follow your instructions. Other jurors have
25 expressed discomfort or acting to the best of their ability

1 and the Court rightly has indicated that we don't have a
2 crystal ball here. I think the Court should seat this juror.

3 MR. BURLINGAME: We'd move for a strike -- to strike
4 for cause. He's repeatedly expressed reservations about his
5 ability to be fair and impartial in the marijuana distribution
6 charges based on his own involvement, and he stated that he
7 would be uncomfortable being a juror based on a lot of
8 activity in the case takes place in his neighborhood.

9 MS. SHARKEY: He also said that he was charged with
10 those crimes at seventeen and eighteen and he was wrong and he
11 was definitely doing something wrong and he harbors no
12 resentment towards law enforcement, that they were doing their
13 job.

14 MR. BURLINGAME: Judge, I --

15 THE COURT: Based on my observation of his demeanor,
16 I believe that he would be influenced by his brush with the
17 law on marijuana.

18 He is excused.

19 MR. FARBER: Over the defense objection, Your
20 Honor.

21 THE COURT: Yes.

22 THE CLERK: Next is juror seven.

23 (Juror present.)

24 THE COURT: Sit down, won't you, please?

25 How are you?

1 THE PROSPECTIVE JUROR: Fine. Okay.

2 THE COURT: How are you feeling?

3 THE PROSPECTIVE JUROR: Okay.

4 THE COURT: Did you have any problems getting in
5 today?

6 THE PROSPECTIVE JUROR: Yes. I come from Long
7 Island. So it's about two hours.

8 THE COURT: Where?

9 THE PROSPECTIVE JUROR: From Manhasset.

10 THE COURT: Manhasset?

11 THE PROSPECTIVE JUROR: Yes. I took the 7:10 train.

12 THE COURT: From Manhasset? So you took the Long
13 Island Rail Road?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: That's a good train, isn't it?

16 THE PROSPECTIVE JUROR: Yes. It is fast.

17 THE COURT: How long have you been in this country?

18 THE PROSPECTIVE JUROR: I think around '78, '80.

19 THE COURT: Since then?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Do you work?

22 THE PROSPECTIVE JUROR: No. I mean I used to work.
23 After I had my son I am not working now.

24 THE COURT: What kind of work did you do?

25 THE PROSPECTIVE JUROR: I worked in a pharmacy, in

1 internship.

2 THE COURT: How old is your son?

3 THE PROSPECTIVE JUROR: Fourteen.

4 THE COURT: Can you be away from the house?

5 THE PROSPECTIVE JUROR: No. That's why I am not
6 working, you know.

7 THE COURT: No. I mean, would jury service
8 interfere with your ability to take care of the child?

9 THE PROSPECTIVE JUROR: Yes. Because, you know, up
10 until three it will be okay. After that.

11 THE COURT: You can only work here until 3:00
12 o'clock?

13 THE PROSPECTIVE JUROR: Yes.

14 THE COURT: You are excused.

15 Thank you.

16 THE PROSPECTIVE JUROR: Okay.

17 THE COURT: Thank you.

18 THE PROSPECTIVE JUROR: Thank you.

19 (Juror leaves jury room.)

20 THE CLERK: Next juror 31.

21 98 was excused yesterday.

22 (Juror present.)

23 THE COURT: Sit down, won't you?

24 Good morning.

25 THE PROSPECTIVE JUROR: Good morning. Juror number

1 31.

2 THE COURT: Did you have any problem getting in this
3 mornin g?

4 THE PROSPECTIVE JUROR: No.

5 THE COURT: Where do you live?

6 THE PROSPECTIVE JUROR: Queens.

7 THE COURT: What part?

8 THE PROSPECTIVE JUROR: Flushi ng.

9 THE COURT: Not far, is it?

10 Do you remember any of the cases you followed in the
11 newspapers or on TV?

12 THE PROSPECTIVE JUROR: Do I remember the whole
13 thi ng?

14 THE COURT: Whi ch?

15 THE PROSPECTIVE JUROR: The whole thi ng? Just part
16 of it.

17 THE COURT: You thought they were treated fairl y?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: The peopl e?

20 THE PROSPECTIVE JUROR: Yes.

21 THE COURT: Do you know anything about the present
22 case?

23 THE PROSPECTIVE JUROR: Just a l i t t l e b i t.

24 THE COURT: What do you know?

25 THE PROSPECTIVE JUROR: He's part of the Gambi no

1 Family.

2 THE COURT: That's just the charge. It hasn't been
3 proven. Do you know that?

4 THE PROSPECTIVE JUROR: Yes. I mean, it's assumed.
5 It is presumed. But --

6 THE COURT: Presumed what?

7 THE PROSPECTIVE JUROR: That -- they'd been accused
8 for certain charges.

9 THE COURT: I'm sorry. I can't hear you.

10 THE PROSPECTIVE JUROR: Well, like I mean, I read in
11 the newspapers that he -- the defendant is accused of certain
12 crimes.

13 THE COURT: Like what?

14 THE PROSPECTIVE JUROR: Murder, drugs.

15 THE COURT: What newspaper?

16 THE PROSPECTIVE JUROR: I think it was Daily News or
17 New York Post. I am not sure.

18 THE COURT: Any details of the crimes alleged?

19 THE PROSPECTIVE JUROR: Some of it, yes.

20 THE COURT: What?

21 THE PROSPECTIVE JUROR: Well, on the newspaper I
22 read there was that some -- somebody got killed, actually like
23 they used acid to --

24 THE COURT: Did that upset you when you saw acid?

25 THE PROSPECTIVE JUROR: It is disturbing. But --

1 THE COURT: You are excused.

2 Thank you.

3 (Juror excused.)

4 THE CLERK: Juror 75 has been excused.

5 This is juror 76.

6 (Juror present.)

7 THE COURT: Hello. How are you? How are you
8 feeling?

9 THE PROSPECTIVE JUROR: All right.

10 THE COURT: I see you didn't answer questions 59 to
11 89. Why did you stop answering questions?

12 THE PROSPECTIVE JUROR: I couldn't understand.

13 THE COURT: You couldn't understand them?

14 THE PROSPECTIVE JUROR: No.

15 THE COURT: You are excused.

16 Thank you.

17 You are excused. You can go home.

18 THE PROSPECTIVE JUROR: Okay. Thank you.

19 (Juror excused.)

20 THE CLERK: Juror 77.

21 (Juror present.)

22 THE COURT: Good morning. Sit down right here,
23 madam, please.

24 Do you have any medical problem that will affect
25 your ability?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: You do?

3 THE PROSPECTIVE JUROR: I do.

4 THE COURT: You are excused.

5 Thank you.

6 THE PROSPECTIVE JUROR: Thank you.

7 (Juror excused.)

8 THE COURT: How many more do we have out there?

9 THE CLERK: The last one we have is 39.

10 THE COURT: No. How many more people do we have?
11 Do we have enough?

12 THE CLERK: Yes.

13 THE COURT: Okay.

14 THE CLERK: This is juror 44.

15 (Juror present.)

16 THE COURT: Good morning.

17 Sit down here, won't you, sir, please?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: How are you today?

20 THE PROSPECTIVE JUROR: Fine. I'm here.

21 THE COURT: That's a good step.

22 Where do you live?

23 THE PROSPECTIVE JUROR: Brooklyn, Bensonhurst.

24 THE COURT: You get here how?

25 THE PROSPECTIVE JUROR: Subway.

1 THE COURT: Sea Beach line?

2 THE PROSPECTIVE JUROR: Yes.

3 THE COURT: In answer to 84-B, you indicated "yes."

4 The question was: Do you have feelings about a witness
5 seeking a reduced sentence by cooperating that would make it
6 difficult for you fairly and impartially to consider that
7 testimony or to render a guilty verdict based on the testimony
8 of such witness?

9 You explain: They are serving their own interest
10 more than justice.

11 THE PROSPECTIVE JUROR: That's my feeling.

12 THE COURT: Yes. Well --

13 THE PROSPECTIVE JUROR: Let me put it this way.
14 It's my feeling, but it is also my suspicion that somebody who
15 does something like that is not doing it because they want to
16 be, what's the right word, magnanimous. They are doing it
17 because they are going to get something out of it.

18 THE COURT: If I instructed you on how such a
19 witness should be treated, would you try to follow my
20 instructions?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: Could you believe some of the things
23 that such a witness said despite --

24 THE PROSPECTIVE JUROR: It probably depends on the
25 context.

1 THE COURT: In context, is it possible for you to
2 believe such a witness?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: Would you be a fair and impartial juror?

5 THE PROSPECTIVE JUROR: I would try.

6 THE COURT: Do you think you could?

7 THE PROSPECTIVE JUROR: I believe so.

8 THE COURT: You are approved.

9 Thank you.

10 Wait, there is another question.

11 Have you read anything about this case?

12 THE PROSPECTIVE JUROR: Yes. Amazingly so, over the
13 weekend there were several articles in the paper about this
14 case.

15 THE COURT: There were?

16 THE PROSPECTIVE JUROR: Which brought back some
17 memories of some other things that had gone on in the past.

18 THE COURT: What did you read?

19 THE PROSPECTIVE JUROR: They were talking about the
20 trial is going to start Wednesday and the -- the people who
21 are involved in the trial have been involved with other
22 things, such as the court officer that was killed in Queens.
23 I think it was about ten years ago.

24 There was a whole -- there were several articles
25 about the whole trial and the charges that they expect to be

1 brought up and so on and so forth.

2 THE COURT: Will that affect your verdict?

3 THE PROSPECTIVE JUROR: I don't know whether it will
4 affect my verdict, but I think it will, you know, affect my
5 outlook to some degree until I hear what is going to be
6 presided.

7 THE COURT: What papers did you read?

8 THE PROSPECTIVE JUROR: It was Daily News. It was,
9 I believe, both Saturday and Sunday. And my wife said there
10 was something in the paper yesterday but I didn't really see
11 it. I just kind of flipped through the paper.

12 THE COURT: What paper was that?

13 THE PROSPECTIVE JUROR: That was also the Daily
14 News.

15 THE COURT: Do you remember any details about the
16 case?

17 THE PROSPECTIVE JUROR: As I understand it, as I
18 remember what they said in the newspaper, was that the
19 defendant was involved with a court officer that apparently
20 had arrested him for carrying a gun in Queens. And after I
21 read the article I kind of remember that situation and to the
22 best of my memory¹ it was like ten or twelve years ago.

23 They talked about some instructions you would offer,
24 that they can't use certain words during the trial.

25 THE COURT: What words?

1 THE PROSPECTIVE JUROR: I believe the word was acid.
2 It's too inflammatory.

3 THE COURT: All right. You are excused.
4 Thank you.

5 (Witness excused.)

6 THE COURT: We have eight jurors left and nine on
7 the list.

8 THE CLERK: 81 isn't here. So we have juror five.

9 MS. SHARKEY: Juror five?

10 THE CLERK: This is juror five.

11 MR. FARBER: 81 is in the wind?

12 THE CLERK: Is not here.

13 (Juror present.)

14 THE COURT: Good morning. How are you?

15 How are you today?

16 THE PROSPECTIVE JUROR: Your Honor, I want to be
17 excused from this case.

18 THE COURT: Why?

19 THE PROSPECTIVE JUROR: I already made my decision
20 on whether this case or not.

21 THE COURT: You have decided?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: How have you decided the case?

24 THE PROSPECTIVE JUROR: Well, I don't think I want
25 to say it right here.

1 THE COURT: Well, the --

2 THE PROSPECTIVE JUROR: I have read about the murder
3 on the Internet.

4 THE COURT: You looked it up on the Internet?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. You are excused. Excused.

7 THE PROSPECTIVE JUROR: Thank you.

8 THE COURT: Thank you.

9 (Juror excused.)

10 MR. FARBER: Judge, at the conclusion of this
11 process, I would ask that the Court would consider giving a
12 publicity voir dire of the entire panel again.

13 It's come to pretty evident now that there have been
14 several articles in the newspaper in the last couple of days.
15 Chances are the jurors have all read it, in one form or
16 another.

17 We have been excusing this last group of jurors
18 based on their reading of the papers. It may very well be
19 that the other jurors have been similarly tainted to such an
20 extent that we might have to start with additional jurors.

21 THE COURT: Denied.

22 I think we have had a thorough voir dire.

23 MR. FARBER: My only concern is there have been more
24 articles since we started this process. The jurors have not
25 yet stopped reading the papers. They have not been ordered

1 not to.

2 THE COURT: Yes, they were. I believe I did tell
3 them not to read, didn't I, the first day?

4 MS. SHARKEY: Judge, could I chime in with
5 Mr. Farber?

6 THE COURT: Excuse me. May we continue?
7 49-B.

8 THE CLERK: This is juror 13.

9 THE COURT: Yes, juror 13, question 49-B.
10 (Juror present.)

11 THE PROSPECTIVE JUROR: Good morning.

12 THE COURT: Good morning. How are you?

13 Question 49-B, what opinions or feelings do you have
14 regarding trials and outcomes of those trials that you
15 followed in the newspapers, magazines or the on TV?

16 You say, I felt humiliated for others whose
17 actions -- actions against the innocent.

18 What did you mean by that?

19 THE PROSPECTIVE JUROR: Well, what I meant was we
20 are capable of loving and doing better things and building;
21 but instead then I read that people are hurting other people
22 and destroying and it makes me upset. I feel like we can do
23 better.

24 THE COURT: You understand in this case the
25 defendant is presumed to be innocent?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: And the government has the burden of
3 proving him guilty beyond a reasonable doubt?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: And the fact that there is an indictment
6 is not evidence at all of any guilt.

7 Do you understand that?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Can you decide the case based on the
10 evidence and my instructions?

11 THE PROSPECTIVE JUROR: Sure.

12 THE COURT: Putting aside what you saw in these
13 other matters?

14 THE PROSPECTIVE JUROR: Yes.

15 THE COURT: Any further questions?

16 MS. SHARKEY: Yes.

17 THE COURT: You are accepted.

18 MR. FARBER: We have questions, Your Honor.

19 THE COURT: May I have it?

20 MR. FARBER: We are just writing it out, Judge.

21 MS. SHARKEY: Thank you.

22 THE COURT: One of the charges is that the defendant
23 is a member of organized crime.

24 Can you try such a case fairly?

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: Any further questions?

2 MS. SHARKEY: Thank you.

3 THE COURT: All right. You are approved.

4 Thank you.

5 (Juror leaves jury room.)

6 THE COURT: We have reached forty. Since we have so
7 few left, I think we might as well go through the rest of the
8 panel.

9 THE CLERK: Next is juror 23.

10 (Juror present.)

11 THE COURT: Good morning. How are you?

12 THE PROSPECTIVE JUROR: Good morning.

13 THE COURT: Did you have any trouble getting in
14 today?

15 THE PROSPECTIVE JUROR: No.

16 THE COURT: Where do you live?

17 THE PROSPECTIVE JUROR: In Brooklyn.

18 THE COURT: Where?

19 THE PROSPECTIVE JUROR: Midwood section.

20 THE COURT: Yes.

21 Are you retired?

22 THE PROSPECTIVE JUROR: Yes, I am.

23 THE COURT: Can you be a fair and impartial juror?

24 THE PROSPECTIVE JUROR: Yes, I can.

25 THE COURT: Okay. We are pleased to have you. You

1 are approved.

2 THE PROSPECTIVE JUROR: Thank you.

3 (Juror leaves jury room.)

4 THE CLERK: Next is juror 80.

5 THE COURT: How many more do we have now?

6 Juror 80.

7 (Juror present.)

8 THE COURT: Good morning.

9 Sit down here, won't you, please?

10 How are you?

11 THE PROSPECTIVE JUROR: How are you?

12 THE COURT: Good. I'm feeling good.

13 How are you feeling?

14 THE PROSPECTIVE JUROR: Oh, better.

15 THE COURT: What was the matter before?

16 THE PROSPECTIVE JUROR: No. Just the weather.

17 THE COURT: The weather bothers you?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: I am going to ask a few questions.

20 You were the victim of a crime?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: You reported it?

23 THE PROSPECTIVE JUROR: A hum.

24 THE COURT: Did they find the person who did this?

25 THE PROSPECTIVE JUROR: Well, they -- they pleaded

1 guilty themselves so I didn't have to go in the court or not.

2 THE COURT: Were you generally pleased with the way
3 the case was handled?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: There may be some police who will
6 testify. Will you treat those police the same as any other
7 witness?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Okay.

10 MS. SHARKEY: Judge --

11 THE COURT: Did you testify about a murder case?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Tell us about that.

14 THE PROSPECTIVE JUROR: Oh, oh, God, it has been so
15 many years.

16 Well, the guy that I -- I knew the guy that did it
17 but they are -- I helped the guy that was -- that got killed.
18 So they called me in and they had a fight and the guy that --
19 and the guy hit him in the head, you know. I thought it was
20 self-defense. But I don't know.

21 THE COURT: Did it go to trial?

22 THE PROSPECTIVE JUROR: Yes.

23 THE COURT: You testified at the trial?

24 THE PROSPECTIVE JUROR: A hum. I don't know the
25 outcome.

1 THE COURT: I see.

2 Will that affect your decision in this case?

3 THE PROSPECTIVE JUROR: No.

4 THE COURT: Some family member or friend was charged
5 in a case?

6 THE PROSPECTIVE JUROR: Yes.

7 THE COURT: Or you?

8 THE PROSPECTIVE JUROR: I was. I got arrested
9 before.

10 THE COURT: For what?

11 THE PROSPECTIVE JUROR: For controlled substance.

12 THE COURT: What substance?

13 THE PROSPECTIVE JUROR: Well, I had crack. I was --
14 I was getting high at that time. So it was my own stuff that
15 I got caught with.

16 THE COURT: I see.

17 Were you convicted?

18 THE PROSPECTIVE JUROR: No.

19 I went to a program.

20 THE COURT: You went to the program?

21 THE PROSPECTIVE JUROR: Yes.

22 And that's it. I never looked back.

23 THE COURT: Are you on drugs now?

24 THE PROSPECTIVE JUROR: No.

25 THE COURT: How long ago was this?

1 THE PROSPECTIVE JUROR: About fifteen years.

2 THE COURT: I see.

3 Can you be fair and impartial in a drug case?

4 THE PROSPECTIVE JUROR: Yes.

5 THE COURT: Do you think you were fairly treated?

6 THE PROSPECTIVE JUROR: Yes.

7 They gave -- I didn't have to go to jail. I am glad
8 of that. I told them the truth. I had a problem. So they
9 gave me a chance. I went to a program and I never looked
10 back. I got a job now. I got a beautiful job. I'm doing
11 good.

12 THE COURT: Any other questions?

13 MS. SHARKEY: No.

14 MR. FARBER: No, Judge.

15 MR. BURLINGAME: No, Judge.

16 THE COURT: You are approved.

17 Thank you.

18 THE PROSPECTIVE JUROR: That's it?

19 THE COURT: Yes. You will be sitting on the jury.

20 Thank you.

21 (Juror leaves jury room.)

22 THE CLERK: Next is juror 79.

23 (Juror present.)

24 THE COURT: Good morning.

25 THE PROSPECTIVE JUROR: Good morning.

1 THE COURT: How are you?

2 THE PROSPECTIVE JUROR: Okay.

3 THE COURT: What's the matter?

4 THE PROSPECTIVE JUROR: What?

5 THE COURT: Anything wrong?

6 THE PROSPECTIVE JUROR: Nothing.

7 THE COURT: Nothing?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Where do you live?

10 THE PROSPECTIVE JUROR: Brooklyn.

11 THE COURT: Where?

12 THE PROSPECTIVE JUROR: Bensonhurst.

13 THE COURT: Question 36 asks: Have you or a member
14 of your family participated in any group that takes a position
15 on legal issues? For example, firearms.

16 THE PROSPECTIVE JUROR: My brother is a correction
17 officer.

18 THE COURT: I see.

19 What's your view of firearms?

20 THE PROSPECTIVE JUROR: If -- if -- a firearm don't
21 kill people itself, the people who use it kill.

22 THE COURT: I see.

23 You hear about crimes in family discussions?

24 THE PROSPECTIVE JUROR: Sometime my brother talk
25 about his work at dinnertime. Not much, but it still have

1 something to say.

2 THE COURT: Could you put that out of your mind when
3 you are a juror.

4 THE PROSPECTIVE JUROR: I think so. I think I
5 could.

6 THE COURT: Your brother was a victim of a crime?
7 Your brother was a victim?

8 THE PROSPECTIVE JUROR: Yes.

9 Around fifteen years ago my brother is followed
10 by -- is following by somebody. I think it's a -- a Spanish,
11 that he go -- he go home from school and that guy follow him
12 in my house and lock my brother in the bathroom and quickly he
13 take all the expensive stuff and ran out.

14 THE COURT: Will that affect your view of the case?

15 THE PROSPECTIVE JUROR: I am not really the victim.
16 But I don't know.

17 THE COURT: Could you put that out of your mind when
18 you consider the case?

19 THE PROSPECTIVE JUROR: I think so.

20 THE COURT: Speak up.

21 THE PROSPECTIVE JUROR: I think so.

22 THE COURT: You have a friend who is in law
23 enforcement as well as family?

24 THE PROSPECTIVE JUROR: Yes. My cousin, some of my
25 friend, yes.

1 THE COURT: There will be some people who are in law
2 enforcement who will testify.

3 Can you treat them the way any other witness is
4 treated, according to my instructions?

5 THE PROSPECTIVE JUROR: Maybe.

6 THE COURT: Maybe or yes?

7 THE PROSPECTIVE JUROR: Maybe. I don't know.

8 THE COURT: Will you try to follow my instructions?

9 THE PROSPECTIVE JUROR: Yes, sure.

10 THE COURT: Do you think you will?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Can you be a fair juror?

13 THE PROSPECTIVE JUROR: I think I am.

14 THE COURT: Any further questions?

15 Yes.

16 Did you read about this case at all in the papers?

17 THE PROSPECTIVE JUROR: No.

18 THE COURT: Will the fact that he is being charged,
19 only accused, but not proven, to be an organized crime figure
20 and involved in murders affect your ability to be fair in this
21 case?

22 THE PROSPECTIVE JUROR: I don't -- I don't think so.

23 THE COURT: Can you be fair with such a case?

24 THE PROSPECTIVE JUROR: Yes.

25 THE COURT: Yes?

1 THE PROSPECTIVE JUROR: Yes.

2 THE COURT: Any further questions?

3 MS. SHARKEY: No.

4 THE COURT: Okay. You are approved.

5 Thank you.

6 (Juror leaves jury room.)

7 THE CLERK: 102 is next.

8 (Juror present.)

9 THE COURT: Good morning.

10 How are you today?

11 THE PROSPECTIVE JUROR: Thank you.

12 THE COURT: You don't look happy. What's the
13 matter?

14 THE PROSPECTIVE JUROR: No. Just, you know, late to
15 bed.

16 THE COURT: Late to bed?

17 How long have you been a citizen of this country?

18 THE PROSPECTIVE JUROR: Since '95, '96, something
19 like that.

20 THE COURT: What kind of work do you do?

21 THE PROSPECTIVE JUROR: Occupational safety and
22 health. Occupational safety and health, it's involved
23 ergonomics, personal protection equipment, engineering.

24 THE COURT: Are you a member of a union?

25 THE PROSPECTIVE JUROR: Yes.

1 THE COURT: You did work with environmental hazards,
2 like asbestos?

3 THE PROSPECTIVE JUROR: Yes.

4 It's all safety and health issues, including, you
5 know, like asbestos, lead, all -- all safety.

6 THE COURT: Are you licensed for that?

7 THE PROSPECTIVE JUROR: For asbestos. I licensed
8 for asbestos.

9 THE COURT: For asbestos.

10 How many people do you have working for you?

11 THE PROSPECTIVE JUROR: Directly? Maybe three. I
12 supervise staff of three.

13 THE COURT: Do you think you can be fair in this
14 case?

15 THE PROSPECTIVE JUROR: See, I am working in a
16 citywide office. So I am dealing with all city agencies,
17 correction and NYPD, Probation, you know.

18 THE COURT: But in this criminal case, where the
19 charge is that the defendant is a member of the mob, can you
20 be fair?

21 THE PROSPECTIVE JUROR: I don't think so.

22 THE COURT: You don't think so?

23 THE PROSPECTIVE JUROR: No.

24 THE COURT: You are excused.

25 (Juror excused.)

1 THE COURT: I have how many more?

2 THE CLERK: I think we have three more. Then we
3 will see if anyone else shows up.

4 Juror three.

5 (Juror present.)

6 THE COURT: Good morning.

7 How are you?

8 THE PROSPECTIVE JUROR: Good.

9 How are you?

10 THE COURT: Fine.

11 You watched the Simpson case?

12 THE PROSPECTIVE JUROR: Yes.

13 THE COURT: Which one?

14 THE PROSPECTIVE JUROR: The first one.

15 THE COURT: The California case?

16 THE PROSPECTIVE JUROR: Yes.

17 THE COURT: Would that affect your decision here?

18 THE PROSPECTIVE JUROR: On this case, no.

19 THE COURT: You say that you have formed an opinion?

20 THE PROSPECTIVE JUROR: Yes.

21 I have read the newspaper articles about such a
22 thing and I think I have an opinion about what -- how I feel
23 about the -- the defendant.

24 THE COURT: What articles did you read?

25 THE PROSPECTIVE JUROR: The New York Post, about how

1 he made a phone call to his mother prior to getting arrested
2 and how he was -- how he was -- how they found -- they
3 couldn't prove that he actually murdered somebody, but it was
4 related to him.

5 THE COURT: Will that affect your verdict, do you
6 think?

7 THE PROSPECTIVE JUROR: Definitely.

8 THE COURT: You are excused.

9 THE PROSPECTIVE JUROR: Thank you.

10 (Juror excused.)

11 (Continued on next page.)

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1 THE CLERK: 108, which is the next number is not
2 here, but number 71 from yesterday came back. We have 71 and
3 120.

4 THE COURT: Bring in number 71, please.

5 (Pause.)

6 THE COURT: Good morning, sir.

7 THE PROSPECTIVE JUROR: Good morning.

8 THE COURT: You were not here yesterday?

9 THE PROSPECTIVE JUROR: Correct.

10 THE COURT: Why is that?

11 THE PROSPECTIVE JUROR: I had an emergency, had to
12 take my daughter to the emergency room yesterday.

13 THE COURT: How old is your daughter?

14 THE PROSPECTIVE JUROR: She's 16.

15 THE COURT: Is she all right now?

16 THE PROSPECTIVE JUROR: She's fine, yes.

17 THE COURT: Will you be able to serve here?

18 THE PROSPECTIVE JUROR: Yes.

19 THE COURT: Your niece's mother was the victim of a
20 homicide?

21 THE PROSPECTIVE JUROR: Yes.

22 THE COURT: When was that?

23 THE PROSPECTIVE JUROR: That was about 15 --
24 actually about 20 years ago.

25 THE COURT: Will that affect your decision here?

1 THE PROSPECTIVE JUROR: No.

2 THE COURT: Can you be a fair and impartial juror?

3 THE PROSPECTIVE JUROR: Yes.

4 THE COURT: You're approved.

5 MR. FARBER: Judge (handing.)

6 THE COURT: This defendant is accused of being a
7 member of organized crime but he's presumed to be innocent; do
8 you understand that?

9 THE PROSPECTIVE JUROR: Yes.

10 THE COURT: Can you be fair in such a case?

11 THE PROSPECTIVE JUROR: Yes.

12 THE COURT: Did you read about this case?

13 THE PROSPECTIVE JUROR: No.

14 THE COURT: You're approved. Thank you very much.

15 THE PROSPECTIVE JUROR: You're welcome.

16 (Juror leaves.)

17 THE COURT: Next, please.

18 THE CLERK: 120.

19 THE COURT: Sit down, sir, won't you?

20 THE PROSPECTIVE JUROR: Right here (indicating)?

21 THE COURT: Yes.

22 How are you feeling?

23 THE PROSPECTIVE JUROR: Fine, thanks.

24 THE COURT: No problems?

25 THE PROSPECTIVE JUROR: No problems.

1 THE COURT: Can you sit on this case?

2 THE PROSPECTIVE JUROR: Excuse me?

3 THE COURT: Can you physically sit?

4 THE PROSPECTIVE JUROR: Sure.

5 THE COURT: You say you're open-minded.

6 THE PROSPECTIVE JUROR: Yes, very much so.

7 THE COURT: Do you have any judgment about this
8 particular case?

9 THE PROSPECTIVE JUROR: No, not at all. I don't
10 know anything about it.

11 THE COURT: Did you read about it?

12 THE PROSPECTIVE JUROR: No.

13 THE COURT: What's your occupation, sir?

14 THE PROSPECTIVE JUROR: I'm a full-time night and
15 weekend patrol security officer.

16 THE COURT: For who?

17 THE PROSPECTIVE JUROR: For CBS outdoor
18 advertising.

19 THE COURT: Will you be working while you're on the
20 jury?

21 THE PROSPECTIVE JUROR: No.

22 THE COURT: Who in your family, you or a friend
23 have been a witness to a crime?

24 THE PROSPECTIVE JUROR: A witness to a crime?

25 THE COURT: If at all.

1 THE PROSPECTIVE JUROR: I think I was a witness of
2 what happened after a crime the day my father committed
3 suicide. I saw him lying dead.

4 THE COURT: The crime was suicide?

5 THE PROSPECTIVE JUROR: Yes.

6 THE COURT: Anybody you know except your father
7 that has been the victim of a crime?

8 THE PROSPECTIVE JUROR: In my family, no. Friends,
9 no.

10 THE COURT: You understand all evidence admitted
11 here will be legally obtained.

12 THE PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: You have any feeling about any type of
14 evidence, such as surveillance?

15 THE PROSPECTIVE JUROR: Not at all. I approve of
16 that type of thing.

17 THE COURT: You understand the prosecution has the
18 burden of proof, the government has to prove guilt beyond a
19 reasonable doubt; do you understand that?

20 THE PROSPECTIVE JUROR: Yes, I understand.

21 THE COURT: The defendant doesn't have to testify
22 or do anything; do you understand that?

23 THE PROSPECTIVE JUROR: Yes, I understand.

24 THE COURT: The fact that he's accused of being a
25 member of organized crime, will that affect your ability to be

1 fair and impartial?

2 THE PROSPECTIVE JUROR: No, it wouldn't affect my
3 ability to be fair and impartial.

4 THE COURT: Any further questions?

5 MR. FARBER: No.

6 THE COURT: You're approved as a juror. Thank you.

7 THE PROSPECTIVE JUROR: Thank you for taking me on.
8 I look forward to it.

9 THE COURT: We'll see.

10 THE PROSPECTIVE JUROR: I'm happy to help you get
11 the best possible verdict.

12 THE COURT: We'll see how far this goes. Thank
13 you. There's another stage in the process.

14 THE PROSPECTIVE JUROR: Thank you.

15 (Juror leaves.)

16 THE CLERK: I believe we've exhausted. We're
17 checking.

18 That's the final.

19 THE COURT: That's it?

20 THE CLERK: That's it.

21 MR. BURLINGAME: We object to 120 for cause, a
22 number of grounds. His answers in the questionnaire were
23 somewhat incoherent. He took approximately twice as long to
24 fill out the questionnaires as opposed to the rest of the
25 jurors. He appeared extremely eager to be on the jury, also

1 seemed confused about the nature of what's a crime, what's not
2 a crime as far as his father's suicide went.

3 THE COURT: Suicide is a crime. It's only
4 prosecuted when it's an attempt, if it isn't successful, as
5 far as I know -- in some places.

6 MR. BURLINGAME: The main objection, he seemed
7 extraordinarily eager to be on the jury.

8 THE COURT: Yes, he was somewhat manic. Does the
9 defendant object?

10 MS. SHARKEY: We would object to him being
11 challenged for cause.

12 THE COURT: We'll keep him.

13 Any other problems?

14 MR. BURLINGAME: We realized yesterday we forgot to
15 object for cause to juror number eight who said his godfather
16 was a capo in organized crime. We would like to object to him
17 for cause. The very fact he knows the term "capo" suggests
18 too much familiarity and his godfather was a capo, also
19 appeared to be evading the question directly when you asked
20 him which family. He said he didn't know. My thought is he
21 knew who his godfather was a capo in.

22 MR. FARBER: He had not spoken to the man in more
23 than three times in his entire life. It's presumptuous for
24 Mr. Burlingame to say he could read into the man's mind,
25 doesn't know the name of the family. We accept him on face

1 value, appears to follow the court's instructions. Someone
2 designated a godfather when he was a child should be held
3 against him as to his fitness as a juror?

4 MR. BURLINGAME: He said he had uncles connected
5 with organized crime.

6 MS. SHARKEY: That was followed up by the court.

7 THE COURT: It's not unusual, as you know, for
8 blood relatives, relatives such as in marriage to be split in
9 New York City, half of them going into the Mafia, the other
10 half going into police and other forms of lawful endeavor.

11 MR. BURLINGAME: May not be unusual, but doesn't
12 necessarily make him a great juror. That doesn't make him a
13 fair juror in an organized crime case.

14 THE COURT: There are thousands of people who are
15 perfectly capable even though they have relatives who are
16 members of the Mafia. Motion denied. It's now 20 after
17 11:00. I take it you want to assemble your forces, decide
18 what you want to do about your peremptories. I suggested we
19 adjourn now and convene at 1:00 o'clock, exercise peremptories
20 then.

21 MS. SHARKEY: I have a request. The marshals have
22 been great about putting Mr. Carneglia right in the cell
23 block. That said, downstairs there seems to have been some
24 stoppage with our being able to see him. Just so it's so
25 important, because we confer with him over this break, I don't

1 know how to make it happen. Certainly the marshals have
2 escorted him, have been wonderful. We can't always get
3 through the front window.

4 MR. FARBER: Is it possible to remain up here in
5 this room until we finish reviewing?

6 THE MARSHAL: We could make him available
7 downstairs.

8 THE COURT: They'll make some place available for
9 you. 1:00 o'clock, please.

10 We'll have to have the defendant in place in the
11 courtroom. We'll exercise in the courtroom. The defendant
12 doesn't want to be at the side bar. We'll clear the
13 courtroom, lock it, get everybody in place and then we'll
14 bring everybody into position.

15 I think you can handle that without me.

16 THE CLERK: Yes, your Honor.

17 THE COURT: Otherwise we'll have to have the
18 defendant -- well, just make that announcement we're going to
19 convene again at 1:00 o'clock, working on the papers and we
20 want the courtroom cleared. They're to come back and take
21 their position that they're now in and we'll see them at 1:00
22 o'clock. Have him in the courtroom at 10 to 1:00, please,
23 with everybody else in position.

24 THE MARSHAL: Yes, your Honor.

25 MR. FARBER: Another matter. In terms of getting

1 access to the courthouse, number one, is there something the
2 court can do to speed the defense attorneys through?
3 Apparently I arrived at the same time people being sworn in as
4 citizens, if I could just bypass the security?

5 THE COURT: You have to go through.

6 MR. FARBER: I don't mind going through it. The
7 line was out the door literally.

8 THE COURT: Arrange for that.

9 THE CLERK: That's not a problem.

10 THE COURT: Ms. Lowe will arrange for you.

11 MR. FARBER: Thank you.

12 THE COURT: Thank you.

13 (Recess.)

14 (Continues on next page.)

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A F T E R N O O N S E S S I O N

(In open court; prospective jurors present.)

THE COURT: Good afternoon, everyone.

We approved a good many of you as jurors. You'll be wonderful jurors. But we now have another phase to go through. They are called peremptory challenges, and each side has a certain number of them and they'll exercise them at the sidebar, and those of you who are challenged will be released.

Don't feel slighted if you're not chosen for the jury. We think you're lovely people, but for one reason or another, somebody else might be a better juror in the estimation of the attorneys.

I'll see the attorneys now at the sidebar.

(Sidebar.)

THE COURT: All right. We'll proceed this way. The first wave, we'll have two by the defendants first, and then one by the government.

Second wave, two by the defendants, one by the government.

Third wave, two by defendants and one by the government.

Fourth wave, one and one.

Fifth wave, one and one.

Sixth wave, one and one.

Alternates will be one and one, and one and one, and

1 so on.

2 The defendant will exercise first. It means they
3 will exercise the last challenge, and then the government on
4 the alternates will exercise first.

5 Defendant, you're just challenging in the first
6 twelve, not in the back row. They will be filled in after you
7 challenge in the order that we have already assigned.

8 MS. SHARKEY: Yes, your Honor.

9 The defense challenges Seat Four, Juror Number 88.

10 THE COURT: 88. Yes.

11 MS. SHARKEY: Seat Six.

12 THE COURT: Juror 62.

13 MS. SHARKEY: Yes.

14 THE COURT: The government.

15 MR. BURLINGAME: Juror Number Eight.

16 THE COURT: 45?

17 MR. BURLINGAME: No.

18 Sorry, Judge. We had it mixed up.

19 Box Position 11, Juror Number 57.

20 (In open court.)

21 THE COURT: The juror in the fourth seat, that's
22 Juror Number 88, you are excused.

23 Juror 62, in the last seat in the first row, you are
24 excused.

25 Juror 57, in the next-to-the-last seat in the second

1 row, you are excused.

2 Juror 68 is now -- will take Seat Four. Just come
3 down.

4 101, you'll take that last seat in the first row.

5 Juror 20, take the next-to-the-last seat in the
6 second row.

7 (Sidebar.)

8 THE COURT: The government goes first.

9 MR. BURLINGAME: Juror 25, who is in Box Position
10 Two.

11 MS. SHARKEY: Judge, can we confirm their seats?
12 Seat Four, what juror number is in Seat Four?

13 THE COURT: 68. You are challenging 68?

14 MS. SHARKEY: No. Our chart is backwards.

15 THE COURT: Take your time.

16 MS. SHARKEY: Sorry, Judge.

17 MR. FARBER: Okay.

18 MS. SHARKEY: It's their challenge.

19 THE COURT: They challenged Juror 25 in Seat Two.

20 MS. SHARKEY: Seat Nine.

21 THE COURT: Number 38?

22 MS. SHARKEY: That's right.

23 MS. SHARKEY: And Seat Five in the front row, Juror
24 Number 70.

25 THE COURT: Juror Number 70.

1 (In open court.)

2 THE COURT: Juror 25, you are excused.

3 Juror 70, you are excused.

4 Juror 38, you are excused.

5 Juror 61, take Seat Two, please.

6 Juror 34, take Seat Five, please.

7 Juror 107, take Seat Nine, please.

8 MR. BURLINGAME: Judge, what juror number is in Seat
9 Five?

10 THE COURT: Juror Number 34.

11 Defense has two challenges.

12 MS. SHARKEY: Seat Two, Juror Number 61.

13 THE COURT: Okay.

14 You have another challenge.

15 MR. FARBER: One moment, your Honor.

16 THE COURT: Take your time.

17 (Pause.)

18 MS. SHARKEY: Seat Seven.

19 THE COURT: Juror 114?

20 MR. FARBER: Yes, your Honor.

21 (In open court.)

22 THE COURT: Juror Number 61, you are excused.

23 (Sidebar.)

24 THE COURT: You have one more.

25 MS. SHARKEY: We just did two.

1 THE COURT: The government goes. I'm sorry.

2 MR. BURLINGAME: Juror 34.

3 (In open court.)

4 THE COURT: Juror 34, you are excused.

5 Juror 114, you are excused.

6 That's the third wave; right?

7 MS. SHARKEY: Yes, your Honor.

8 (In open court.)

9 THE COURT: Juror Eight, take Seat Two, please.

10 Juror 26, take Seat Five, please.

11 Juror 29, take Seat Seven, please.

12 (Sidebar.)

13 THE COURT: The government goes first.

14 MR. BURLINGAME: Juror Number Eight, Judge.

15 THE COURT: All right.

16 MS. SHARKEY: What seat did they challenge?

17 THE COURT: Seat Two, Juror Eight.

18 (Pause.)

19 MR. FARBER: This is the original number, and this
20 is the Seat Number.

21 THE COURT: The Seat Number is Seat Six for Juror
22 Number 101.

23 MR. FARBER: What's the smaller number?

24 THE COURT: That's the original seat they were in.

25 MR. FARBER: I should be looking at the big number.

1 I have the numbers mixed up in my head.

2 THE COURT: Yes. It is confusing.

3 (Pause.)

4 MS. SHARKEY: Judge, Seat Number Eight.

5 THE COURT: Eight?

6 MS. SHARKEY: Seat Eight.

7 THE COURT: Juror Number 45?

8 MS. SHARKEY: Yes.

9 THE COURT: One more.

10 MS. SHARKEY: I thought we're on one now.

11 THE COURT: Two, two, two, two, one, one.

12 Two, four, six, eight, nine, ten.

13 (Pause.)

14 MS. SHARKEY: We're getting there. Our organization
15 fell apart. I apologize.

16 THE COURT: That's all right. It's important that
17 you get it right.

18 MS. SHARKEY: It is. Thank you, your Honor.

19 (Pause.)

20 MS. SHARKEY: Judge, we don't have a challenge at
21 this point.

22 THE COURT: You waive one?

23 MS. SHARKEY: Yes.

24 (In open court.)

25 THE COURT: Juror Eight, you are excused.

1 Juror 45, you are excused.

2 Juror 116, would you take Seat Two in the first row.

3 Juror Sixteen, would you take the second seat in the
4 second row, please.

5 (Si debar.)

6 THE COURT: The defendant goes first. You have one
7 chal l enge.

8 MR. FARBER: Do we go first?

9 THE COURT: You go first.

10 MS. SHARKEY: We'll chal l enge Seat Eight.

11 THE COURT: Seat Eight, Juror 29?

12 MR. FARBER: The one next to it.

13 THE COURT: Juror Sixteen?

14 MR. FARBER: Yes.

15 THE COURT: Okay.

16 The government.

17 MR. BURLINGAME: Juror 29 in Seat Seven.

18 (In open court.)

19 THE COURT: Juror 29, you are excused.

20 Juror 16, you are excused.

21 Juror 18, would you take that first seat in the
22 second row, please.

23 Juror 93, take the second seat in the second row,
24 pl ease.

25 (Si debar.)

1 THE COURT: The government goes first. This is your
2 last challenge.

3 MR. NORRIS: This is our last challenge?

4 THE COURT: For the jury, yes.

5 MR. NORRIS: One moment, please.

6 (Pause.)

7 MR. BURLINGAME: Judge, we'll strike Juror Number
8 20, who is in Seat Number 11.

9 THE COURT: Juror 20, Seat 11. Okay.
10 The last challenge for the defendant.

11 MS. SHARKEY: Seat Seven.

12 MR. FARBER: Juror Number 18, Judge.

13 THE COURT: Say that again. What number?

14 MR. FARBER: Number 18, Seat Seven.

15 THE COURT: All right.

16 (In open court.)

17 THE COURT: Juror 18, you are excused.

18 Juror 20, you are excused.

19 Juror 40, take Seat Seven, please.

20 Juror 36, take Seat 11, please.

21 That's our jury.

22 Juror One, do you have a problem?

23 A JUROR: I'm really not happy with the length of
24 the trial.

25 THE COURT: Nobody is. You start out unanimous in

1 that respect. Everybody's unhappy.

2 Do you have any peculiar problem?

3 A JUROR: Peculiar problems?

4 THE COURT: That's different from everybody else's?

5 A JUROR: I have a business that I should be
6 attending to or have to attend to. The length of the trial
7 might interfere with it.

8 THE COURT: I'm afraid you'll have to persist as a
9 juror.

10 A JUROR: So be it.

11 THE COURT: All right.

12 Give me six cards, please.

13 Juror 12, take the first seat in the third row.

14 Juror 105, take the second seat.

15 Juror One, take the third seat.

16 Juror Ten, take the fourth seat.

17 Juror 84, take the fifth seat.

18 Juror 48, take the sixth seat.

19 (Sidebar.)

20 THE COURT: The defendant will go first.

21 MR. BURLINGAME: Can we make a quick note for the
22 record?

23 I believe -- our notes on the juror who is in the
24 current first position, who asked to get off, detailed that he
25 seemed afraid during voir dire.

1 THE COURT: I can't hear you. Come across.

2 MR. BURLINGAME: The juror who just asked to come
3 off, the juror, our notes from voir dire indicated that we had
4 a concern, that he appeared afraid during jury selection, and
5 I'm concerned. I was wondering if the Court might like to
6 voir dire him personally?

7 THE COURT: I do not.

8 Do you join in that application?

9 MS. SHARKEY: No. Absolutely not.

10 THE COURT: The defendant will challenge the
11 alternates first.

12 MS. SHARKEY: Juror Number 105 in the second
13 alternate spot.

14 THE COURT: Juror 105.

15 The government.

16 MR. NORRIS: Can we have one moment, your Honor?

17 THE COURT: Okay.

18 (Pause.)

19 MR. BURLINGAME: Juror 48, Judge.

20 THE COURT: The last juror?

21 MR. NORRIS: Yes.

22 (In open court.)

23 THE COURT: Juror 12, you are excused.

24 Juror 48, you are excused.

25 Juror 83, take the first seat in that last row.

1 MR. BURLINGAME: One struck 12.

2 MR. NORRIS: It should be 105.

3 THE COURT: I'm sorry.

4 Get him back.

5 Who was in Seven?

6 MR. NORRIS: That was 12.

7 Who was in Seat 12?

8 MS. SHARKEY: Seat 12 --

9 MR. NORRIS: 48.

10 (Sidebar.)

11 THE COURT: Do you want to excuse the juror in the
12 second seat?

13 MS. SHARKEY: I struck the juror in the second seat.

14 THE COURT: 105?

15 MS. SHARKEY: Yes.

16 (In open court.)

17 THE COURT: 105.

18 THE LAW CLERK: This is Juror 12.

19 Juror Number 66, Seat 12, the last seat, please.

20 (Sidebar.)

21 THE COURT: Now, we have 12, 83, One, Ten, 84 and
22 66. Okay.

23 (Sidebar.)

24 THE COURT: The defendant goes first.

25 MS. SHARKEY: Judge, I have two more strikes left;

1 correct?

2 THE COURT: You have this one, and the next wave.

3 MS. SHARKEY: The defense challenges the juror
4 sitting in Alternate Seat Five.

5 THE COURT: That's Number 84?

6 MS. SHARKEY: Yes, your Honor.

7 THE COURT: The lady in the red stripes?

8 MS. SHARKEY: Yes.

9 MR. BURLINGAME: Judge, we'll challenge Juror
10 Number 83.

11 THE COURT: The second seat, yes?

12 MR. BURLINGAME: Yes.

13 (In open court.)

14 THE COURT: 83, you are excused.

15 84, you are excused.

16 46, Juror 46, take the second seat, please.

17 Juror 89, take the fifth seat, please.

18 (Sidebar.)

19 THE COURT: You have one more each.

20 The defendant goes first.

21 MS. SHARKEY: The government goes first or we go
22 first?

23 THE COURT: The defendant.

24 MS. SHARKEY: Judge, we will challenge the juror
25 sitting in the last seat.

1 THE COURT: Juror 66?

2 MS. SHARKEY: Yes.

3 THE COURT: The government.

4 MR. BURLINGAME: We challenge Juror 89, right next
5 to him.

6 THE COURT: The next-to-the-last seat?

7 MR. BURLINGAME: Yes, your Honor.

8 (In open court.)

9 THE COURT: Juror 89 and Juror 66, you are excused.
10 Juror 14, take Seat -- the second seat from the end.
11 Juror 47, take the last seat in the last row,
12 please.

13 (Sidebar.)

14 THE COURT: Is the jury satisfactory?

15 MS. SHARKEY: Absolutely.

16 THE COURT: Is the jury satisfactory?

17 MR. BURLINGAME: Except we note the objection we
18 raised earlier at sidebar.

19 THE COURT: Say that again?

20 MR. BURLINGAME: We would just note the objection we
21 raised earlier at sidebar, concerning the juror that was
22 afraid.

23 THE COURT: Juror One?

24 MR. BURLINGAME: Yes.

25 THE COURT: I'm not going to let these jurors go

1 because the first day we may have a problem as people
2 recollect things and find there's serious problems.

3 So, we have six people that have been cleared but
4 haven't been needed. But we'll keep them. Ms. Lowe will keep
5 them separately and apart until Thursday, because Wednesday,
6 we have a problem.

7 May I have the weather report, please?

8 All right. Get back to your seats, please.

9 Thank you very much.

10 (In open court.)

11 THE COURT: I know this has been a somewhat arduous
12 and difficult process to follow, but you have such an
13 important function in the criminal courts that we do spend a
14 great deal of time in selecting.

15 We haven't needed the last six people that I cleared
16 and approved for jury service, but I want them here
17 nonetheless.

18 Now, I have this weather report. I'm going to read
19 it to you.

20 There's a winter-weather advisory in effect from
21 midnight tonight to midnight Wednesday. Snow will overspread
22 the area after midnight tonight and could become heavy at
23 times during the Wednesday morning commute. Snow
24 accumulations of three to five inches are possible during this
25 time. Warmer air aloft will move quickly north across the

1 region Wednesday morning, changing snow to freezing rain and
2 then plain rain by noon. Up to one-tenth of an inch of ice is
3 possible during this transition, and temperatures will warm
4 above freezing by noon. There will be minor urban flooding.

5 A winter-weather advisory means that that period of
6 snow, sleet or freezing rain will cause travel difficulties.
7 Be prepared for slippery roads and limited visibility, and use
8 caution while driving. Significant snow and ice are possible
9 from late tonight through Wednesday evening.

10 Particularly since the marshals are making efforts
11 to gather you together and make it more convenient in the
12 sense of travel, the delays tomorrow during commute may be
13 very great. So, I will suggest to counsel that we excuse the
14 jurors tomorrow and not start tomorrow morning, but start
15 Thursday morning at 9:30.

16 Do any of you have any difficulty with that
17 decision? It does seem sensible.

18 Do counsel agree?

19 MS. SHARKEY: Absolutely. Thank you, your Honor.

20 MR. BURLINGAME: No objection, your Honor.

21 THE COURT: So, you won't be coming in tomorrow.
22 You will be coming in 9:30 on Thursday.

23 Since we are not meeting on Fridays, because we have
24 to prepare witnesses for the next week, that will mean you
25 will be off tomorrow and Friday. But you'll have to be here

1 at 9:30 Thursday.

2 Ms. Lowe, where do they come in Thursday?

3 THE CLERK: Let me take them into the jury room
4 afterwards and speak to them.

5 THE COURT: What we're going to do now is, have you
6 go into the jury room, where I interviewed each of you
7 individually, and wait there. I don't want you to discuss the
8 case among yourselves or with anybody else until I tell you to
9 deliberate.

10 Is that clear?

11 If you have any procedural type questions, Ms. Lowe
12 will help you. You'll have your lunch, and we're going to do
13 everything possible to make it as easy as we can for you. So,
14 if you'll now go into the jury room -- before you go, I want
15 to remind you, I don't want anybody reading any newspapers
16 with respect to this. It's best if you don't read anything at
17 all, but if you do, don't read anything about this case.
18 Don't discuss anything with anybody who has read anything.
19 Don't go on the Internet. Don't do any Googling. Don't do
20 any research of your own.

21 Is that clear?

22 And that applies to the six of you out there, too.
23 Do you understand that?

24 Keep your mind clear.

25 Ms. Lowe will see you now in the jury room.

1 (Jury excused.)

2 THE COURT: Now, on Thursday, I'm going to have the
3 six jurors who have been cleared, I'm going to have the six
4 jurors who have been cleared but not selected come in
5 themselves without the marshals' help, and they will gather in
6 the main jury room and await instructions.

7 Do all six of you hear me?

8 So, Thursday, you'll be here at 9:30, but you'll
9 come in the way you came in this morning, in an equivalent
10 way. The marshals won't assist you. You'll go into the main
11 jury room and wait, and Ms. Lowe will get to you in a few
12 minutes after 9:30, and either we'll use you or let you go.

13 So, you won't come in tomorrow. Come in Thursday at
14 9:30.

15 Now, at the moment, I want you to go into one of the
16 other jury rooms, so Ms. Lowe, after she instructs these
17 eighteen jurors, she can go into the jury room in which you
18 are held and talk to you.

19 (Prospective jurors excused.)

20 THE COURT: Do you have any applications?

21 MR. BURLINGAME: No, your Honor.

22 THE COURT: Now, we have a couple of motions and
23 things to take up?

24 MR. FARBER: Yes, your Honor.

25 THE COURT: I'll hear counsel on the government's

1 motion for reconsideration of the exclusion of acid reference.

2 MS. SHARKEY: Thank you, your Honor.

3 THE COURT: No. The government.

4 MR. BURLINGAME: Thank you, your Honor.

5 I think the government's position is fairly well
6 laid out in its papers. I'll briefly review a couple of
7 points. Did the Court have an opportunity to review the
8 papers?

9 THE COURT: I did. I have the government's letter
10 of January 25, Court Exhibit 2, of 1-26.

11 MR. BURLINGAME: Thank you, your Honor.

12 I would like to take the issues in the reverse
13 order.

14 THE COURT: And I have the defendant's letter of
15 January 26, Court Exhibit 1, of 1-27.

16 Yes.

17 MR. BURLINGAME: I would like to address the issues
18 in the reverse order that we addressed them in the brief,
19 starting with the incident involving acid during the
20 kidnapping.

21 The government's position on that is, the
22 kidnapping, as your Honor is aware, is a charged crime. The
23 basic facts of what happened are, the defendant kidnapped a
24 couple of individuals because there had been an incident of
25 violence at a party that took place at his brother's house and

1 he wanted to get to the bottom of who was responsible. In
2 order to get the information out of his victims, he, you know,
3 asked them questions. When they didn't respond, he poured
4 acid from a turkey baster onto their feet. It caused some
5 irritation to the skin. Eventually, the people relented and
6 gave him the information he was looking for, and that was
7 essentially the end of the incident.

8 There's two reasons I think this evidence is
9 appropriately admitted and is not overly prejudicial in a 403
10 balancing test. One is, this is -- putting a little bit of
11 acid on someone's foot that causes some burning to the skin is
12 -- it pales in comparison to the conduct which the defendant
13 is charged with. He's charged with personally committing five
14 murders, running up behind people and shooting them repeatedly
15 in the brain. This is a minor assault in comparison. So, I
16 think there's no argument that can be made that this is -- the
17 nature of this assault is particularly inflammatory.

18 And second, the government is going to have up to
19 six witnesses who can testify about those basic facts that I
20 explained. Obviously, the defense is going to attack all of
21 our cooperating witnesses for their credibility, and in this
22 particular instance, this is a largely cooperating-witness
23 case. In this instance, the government has a photograph of
24 the foot of one of the victims, which shows, even fifteen
25 years later, a little bit of scarring. It's not -- it doesn't

1 shock the conscience to look at this picture, by any means.
2 If you look at it, you can see there's some scarring on the
3 foot. It's rock-solid corroboration of what the witnesses are
4 going as to testify to, and it's rock-solid corroboration of
5 what they say happened, happened.

6 That not only goes to this charged racketeering act,
7 but it goes to the cooperators' credibility in general, if
8 what they are saying happened can be shown with photographic
9 documents.

10 So, given the fact that the facts at issue are far
11 less inflammatory than any of the murders charged and any of
12 the other myriad acts of violence which are appropriately
13 admitted going toward the defendant's role in the Family,
14 indeed, this is part of his role in the Family, he's the sort
15 of person that, when someone disrespects his brother, a
16 Gambino captain, by committing acts of violence in his house,
17 he immediately seeks retribution and he uses whatever means
18 necessary to get the information. It goes directly to the
19 government's case, and it's a charged crime, and I don't
20 believe it is inflammatory.

21 THE COURT: What was the substance? You say acid?
22 What was the substance?

23 MR. BURLINGAME: I believe that one of the
24 cooperating witnesses will testify that they think it was
25 battery acid. The defendant had an auto junkyard, and it was

1 plain automotive battery acid. It's a different kind of acid
2 from the acid for the corpse disposal, which, if your Honor
3 would like, I can be heard on that.

4 THE COURT: As to that, instead of using the
5 word "acid," if you said -- if they said "substance that
6 burned the foot"?

7 MR. BURLINGAME: I mean, we could just say "battery
8 acid." I think it will be a little bit awkward. Especially
9 if your Honor's ultimate ruling is going to be that acid is
10 not going to come in as to the corpses, it doesn't seem to me
11 there's any prejudice using the word "acid" in this instance.

12 (Continued on next page.)
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1 THE COURT: No. Still, the word "acid" hangs to
2 some extent over the case, because of the publications and the
3 revulsion that I saw in the prospective jurors when the word
4 "acid" was mentioned.

5 MR. BURLINGAME: Judge, I do think that this
6 is -- very squarely is addressed in Pepin, that because the
7 defendant has chosen to do something which offends the jurors,
8 he should not be given the benefit of that conduct.

9 Again, if he shot the guys in the foot obviously
10 that would come in, if we had photographs of a foot with a
11 bullet hole in it. It just seems completely unfair that the
12 defendant should be the beneficiary by making our witnesses
13 use concocted testimony which is not going to have --

14 THE COURT: Not concocted.

15 MR. BURLINGAME: When you ask them what happened,
16 it's -- he poured acid on his foot. That's what --

17 MS. SHARKEY: May I --

18 THE COURT: None of them are chemists. They haven't
19 made a chemical analysis. All they can say is they poured
20 something on his foot which was burning, a burning substance.

21 MS. SHARKEY: Your Honor, before the --

22 THE COURT: I will hear you.

23 MS. SHARKEY: Okay.

24 MR. BURLINGAME: Judge, I think -- I mean, the
25 Supreme Court language in Old Chief that we quoted in our

1 motion I think goes directly to this, that when the government
2 has to awkwardly sidestep, without mentioning, reminding you
3 not to mention the type of substance that was used, please
4 describe what happened next.

5 Or you know, the -- if the witness says he then
6 poured some sort of acid -- some sort of liquid on the foot
7 which caused burning to the foot, the jurors will think what
8 are they talking about. What are they talking about? Why
9 don't they just say what it is.

10 Why is the government the party that has to bear the
11 stigma that's attached to that? We are the ones who are
12 charged with putting on a case. We have to prove him guilty
13 beyond a reasonable doubt.

14 THE COURT: How do you know it was acid?

15 MR. BURLINGAME: Because there is cooperating
16 witnesses who were present and say it was acid. It came -- it
17 makes sense that there was acid there because he works in an
18 automotive yard. I mean, it's -- we have six cooperating
19 witnesses who say it's acid. There is no doubt that it's
20 acid.

21 THE COURT: I am not sure that's so.

22 MR. BURLINGAME: Or it's a --

23 THE COURT: There are a lot of burning substances
24 you can put on which aren't acid.

25 MR. BURLINGAME: But they've all been telling the

1 story for the last 15 years and the defendant has been telling
2 the story for the last 15 years. He has been watching a
3 videotape of him doing this.

4 THE COURT: Saying what?

5 MR. BURLINGAME: Of him -- he requested one of the
6 cooperating witnesses to videotape him pour the acid on the
7 guy's feet and then they watch the videotape afterwards.

8 THE COURT: He said, take a videotape while I pour
9 acid on?

10 MR. BURLINGAME: Yes.

11 THE COURT: He used the word "acid"?

12 MR. BURLINGAME: I don't know whether he used the
13 word acid in the request. He said, meet me at the junkyard.
14 Bring your camera. He proceeded to pour battery acid on the
15 guys feet.

16 I understand Your Honor doesn't want to use the
17 word. The 403 balancing test that we are talking about here
18 is the defendant -- there will be direct evidence that the
19 defendant shot people in the head on multiple occasions. He
20 stabbed people in the heart on multiple occasions. It is very
21 difficult to argue taking a turkey baster and dropping a
22 couple of drops of acid on someone's foot is in any way
23 substantially more prejudicial. The probative value of that,
24 which is extremely high here given the photograph, is
25 substantially outweighed by any prejudice when there is much

1 worse evidence that's coming into the case.

2 In defense counsel's papers this morning they say
3 the government contends that Mr. Carneglia admitted acts of
4 murders and assaults to these men, far worse conduct than
5 disposing of a corpse. If murder and assaults are far worse
6 conduct than disposing of a corpse, where does dropping a few
7 drops from a battery acid out of a turkey baster lie?

8 THE COURT: Out of a turkey baster?

9 MR. BURLINGAME: That they use to base a chicken and
10 turkey in the oven. You get the juices and pour it on top.

11 It is just very specific. This is the sort of
12 specific details that lend testimony an air of credibility.
13 The whole case is going to be --

14 THE COURT: You said they lend verity to testimony?

15 MR. BURLINGAME: That would be more accurate.

16 THE COURT: Not more accurate. It is just a
17 different way of saying it.

18 MR. BURLINGAME: Correct.

19 And this case is, as Your Honor has pointed out on a
20 number of occasions, we are charging 33 years old murders. It
21 will be based largely, if not -- virtually exclusively on
22 cooperating witness testimony. Verity, the veracity of these
23 witnesses is the key to the government's case, and these sorts
24 of details, these particular details, are exactly what show
25 that what they are saying happened happened, especially when

1 they are backed up by a photograph.

2 Would you like to hear argument on the -- on the
3 corpses?

4 THE COURT: No. The corpses I am definitely keeping
5 out as highly prejudicial. This one is a little different.
6 It ties together a good deal of the testimony. It does lend
7 credence by its specificity. But I am hesitant about the acid
8 in view of the publicity we have had.

9 MR. BURLINGAME: With respect, Your Honor, I think
10 that if the Court is firm that the other incidents of melting
11 down bodies in acid are not coming out, there is very little
12 chance that a juror who hears -- this is in the course of
13 cooperating witness testimony, who will testify about five
14 murders, four murders, three murders, thirty years worth of
15 knowing the defendant, eight hours worth of direct testimony.
16 There is going to be this story that involves the turkey
17 baster. I think it's, you know, on week three of the trial or
18 actually no, next -- when this comes up for the first time to
19 think that this is going to send an alarm bell to someone who
20 is not -- not aware of the acid issue because it is not coming
21 into the trial seems like we are being a little too careful
22 and substantially more careful than Rule 403 demands, which,
23 of course, is that the prejudicial -- the unfair prejudicial
24 value substantially outweighs the probative value.

25 One, it is not unfair; two, it doesn't substantially

1 outweigh it in any means. It's actually far less prejudicial
2 than the evidence that is definitely coming in.

3 THE COURT: Well, certainly the characterization of
4 an acid torturer rather than an acid murderer --

5 MR. BURLINGAME: It should be noted --

6 THE COURT: -- has less impact.

7 MR. BURLINGAME: It should also be noted that the
8 person whose foot we took a picture of is in jail in Florida
9 for a Gambino RICO conspiracy case. He's a Gambino family
10 associate. It's not that he is out there picking up little
11 children and torturing their feet with acid. This is part of
12 family -- this is part of family business.

13 MS. SHARKEY: May I respond?

14 THE COURT: Though it is not so harsh to --

15 MR. BURLINGAME: No.

16 There will also be testimony that later, after the
17 incident happened, the victim of it got together with the
18 defendant and there was joking about it. The defendant was
19 giving him a hard time. He made him take off his shoe and
20 they showed the scars that were left on the foot and everyone
21 laughed at him. The defendant bragged about it on a few
22 occasions when the guy was present and sort of bragged -- you
23 know, give the guy the business about this happened when he
24 was younger.

25 It's -- all those little details are what lend this

1 cooperating witness testimony the character of truthfulness,
2 which is going to be vital to our case.

3 THE COURT: Okay.

4 MS. SHARKEY: May I respond?

5 THE COURT: Yes.

6 MS. SHARKEY: Judge, I think the Court made the
7 right ruling in focusing in on the revulsion that is
8 associated with an allegation of acid torture and under 403
9 the Court should preclude it in this particular matter.

10 Mr. Burlingame tells the Court that it is important
11 to corroborate the evidence and it is corroborative. Not so.
12 I mean, what the Court should know is that as charged in the
13 racketeering act, there is not even a specific date. It's
14 over the course of approximately some date, and I don't have
15 the date in front of me, but it's about a year.

16 More than that, the individual who purportedly was
17 burned is not testifying. The individual that was present
18 with him alleged by the government to be also assaulted at
19 that time is not testifying.

20 I have reviewed the photograph. I don't see any
21 acid burns. If the Court reviews the photograph, I think the
22 Court will see that in fact it is not borne out as
23 Mr. Burlingame represents.

24 It in fact is inflammatory. I would imagine that if
25 the Court allows this sort of testimony in, you are concerned

1 about the jury using it in an inappropriate way. I'm sure it
2 will be written about.

3 Under a 403 balancing act, Your Honor, there is no
4 reason why the government needs that particular testimony to
5 come in as corroborative, not at all.

6 They -- what we said in our most recent letter which
7 was filed I think yesterday is that there are far many things
8 that the government is bringing in through their cooperating
9 witnesses that corroborate it a great deal more. They will
10 have, I imagine, admissions and other things through ten
11 cooperating witnesses that they are bringing in to testify in
12 this matter.

13 MR. BURLINGAME: Judge, with respect, as Your Honor
14 pointed out in an earlier discussion of the evidentiary
15 motions, it is not up to the defense to judge what we do and
16 don't need to introduce to win our case. The question is,
17 whether the -- the probative value of this evidence, which I
18 submit is high, is substantially outweighed by unfair
19 prejudice. One, it is not unfair. It's what he did. Two,
20 it's not prejudicial. It's dripping acid on someone's foot
21 with a turkey baster when in the same testimony from all these
22 same witnesses you are going to hear about violent murders,
23 stabbings, shooting in the head, horrific stuff that, frankly,
24 if articles are going to be written, they will be written
25 about the murders, not about this incident where a Gambino

1 Family associate had his foot burned.

2 MS. SHARKEY: Respectfully, I don't even think that
3 the Court at the end of the day when this testimony comes in,
4 that pertaining to this particular incident, it will be
5 credible, and the Court is right on focusing on the
6 inflammatory and prejudicial nature of an acid torture, is how
7 the government would like the jury to perceive Mr. Carneglia.

8 THE COURT: All right. Here is my ruling.

9 MR. BURLINGAME: One more thing, Judge?

10 THE COURT: Yes.

11 MR. BURLINGAME: Which Mr. Norris raised a good
12 point, which is that the reason that all the cooperating
13 witnesses to this, and remember, this story is because it was
14 an exceptional thing that happened and the reason it was an
15 exceptional thing that happened is because it was a strange
16 thing that happened. The reason it was strange is because
17 people don't drip acid on people's foot with turkey basters.
18 That's what the testimony is about the kidnapping. Everybody
19 remembers the charged kidnapping because the acid was used,
20 because of the story with the turkey baster.

21 THE COURT: Who used the word "acid"
22 contemporaneously?

23 MR. BURLINGAME: Every witness I have talked to
24 about this, that's how they remember it.

25 THE COURT: No. Did the defendant say "I used

1 acid"? Why don't you go back and check?

2 MR. BURLINGAME: Yes, he did actually, judge. He
3 went and put an alkaline substance on the guy's foot afterward
4 to try to clean it off to lessen the burning once the guy
5 provided the information asked for.

6 THE COURT: What did he say?

7 MR. BURLINGAME: He said, there is acid on your foot
8 so we need to use this substance to get rid of it because it's
9 an alkaline and that will counter the acid. I obviously was
10 not there with a tape recorder but I would imagine it would be
11 hard to have a conversation about an alkaline substance being
12 the cure for acid without mentioning the word acid, when you
13 are talking about battery acid again --

14 THE COURT: Why don't you go back and check the
15 record and see what you have? For the opening, you can say
16 only that --

17 MR. BURLINGAME: We won't mention it in the opening.

18 THE COURT: You can say only that he used a
19 substance that burned.

20 MR. BURLINGAME: It won't be -- judge, nothing --
21 this is not a major focus of the government's case, by any
22 means. It won't be in the opening.

23 THE COURT: Okay. Go through the record and see
24 what you have, whether he used the word "acid" in connection
25 with this alleged torture.

1 MR. BURLINGAME: Very well, Judge.

2 MS. SHARKEY: Just for the record, Judge, I'd note
3 that nothing in the 3500 material concerning these cooperating
4 witnesses references that, referencing Mr. Carneglia's use of
5 the term "acid."

6 THE COURT: Okay.

7 All right. The next issue is -- excuse me.

8 Juror ten, questionnaire 65, has tickets to Florida
9 next week.

10 MS. SHARKEY: Are they -- juror ten?

11 THE COURT: Yes.

12 MR. FARBER: 65?

13 THE CLERK: Questionnaire number 65.

14 MS. SHARKEY: Your Honor --

15 THE COURT: What do you want to do about that? We
16 will have to --

17 MR. FARBER: Judge, it is a little strange that this
18 juror didn't mention this before. I don't want to attack the
19 credibility of the juror, but I would ask to see the tickets,
20 at the very least, at this stage.

21 THE COURT: All right. Have her bring them in
22 Thursday. Is she still here?

23 Oh, wait. Here are the tickets.

24 MR. FARBER: What's the purchase date?

25 THE CLERK: November.

1 THE COURT: It was purchased November. These are
2 non-refundable tickets usually?

3 THE CLERK: You pay \$25 for a refund.

4 THE COURT: Just one person, a ticket?

5 THE CLERK: No.

6 MR. FARBER: Which juror number?

7 THE COURT: The whole family. It's a whole family
8 tickets.

9 MR. FARBER: Isn't that a male juror?

10 THE CLERK: It is.

11 MR. FARBER: A male juror, okay.

12 THE COURT: Well, what do you want to do about this?

13 MR. BURLINGAME: We have no objection to excusing
14 the person and allowing them to take a family vacation.

15 THE COURT: What we will have to do is excuse that
16 juror. If we excuse him, put in the first alternate, move all
17 the alternates up a seat and take three alternates that we
18 have, the extras, put them on the front bench. Let you each
19 challenge one of them and the one that is left we will put as
20 the sixth alternate.

21 Is that satisfactory?

22 MR. FARBER: Yes, Judge.

23 MR. BURLINGAME: Yes, Judge.

24 THE COURT: I think we'll have to do it.

25 Has the juror gone home?

1 THE CLERK: No. I think they are waiting to hear
2 what you are going to do.

3 THE COURT: All right. Bring in juror ten, please.
4 What about the six?

5 THE CLERK: They are --

6 THE COURT: Are they all here?

7 THE CLERK: I will check.

8 THE COURT: Bring in juror ten.

9 Then get the six to sit on the front bench.

10 THE CLERK: Yes, Your Honor.

11 MS. SHARKEY: The six sworn? They haven't been
12 sworn yet? You have the other six back there still?

13 THE COURT: They are still here. We will seat them
14 on the bench. We will take the first three of those six and
15 you can each challenge one.

16 MR. FARBER: Do you guys know which numbers are
17 left?

18 THE COURT: You will have to get that from Ms. Lowe.

19 MS. SHARKEY: Judge, before they are brought in, can
20 we get the numbers from Ms. Lowe?

21 THE COURT: Yes.

22 She is working with them. She will help you.

23 (Pause.)

24 THE CLERK: They are getting juror ten, Judge. The
25 other jurors are still here.

1 THE COURT: Bring the six of them in. Put them on
2 the front bench. Let's get their questionnaires.

3 MS. SHARKEY: Do you know their numbers, of the six
4 remaini ng?

5 THE CLERK: I have 47, 13, 23, 80, 79, 120.

6 MS. SHARKEY: Thank you.

7 MR. BURLINGAME: Can you do that one more time?

8 THE CLERK: Sure.

9 47, 13, 23, 80, 79, 120.

10 MR. BURLINGAME: In that order, right?

11 THE CLERK: In that order.

12 Judge, are you ready for number ten?

13 THE COURT: Yes.

14 (Juror number ten is present.)

15 THE COURT: Sit up in the front, please. Sit up in
16 the seat, please.

17 Why didn't you tell us this before?

18 A JUROR: I forgot. I found out last night. Sorry.

19 THE COURT: Why didn't you tell us this morning?

20 A JUROR: I didn't know when the proper time was.
21 I'm sorry.

22 THE COURT: Where did you get these papers?

23 A JUROR: From my sister. She is -- we are all
24 taking a trip for my mom down in Florida for her birthday.
25 It's her 73rd birthday.

1 THE COURT: Your mother?

2 A JUROR: My mom.

3 THE COURT: Give her my best wishes.

4 You are excused.

5 A JUROR: Thank you, sir.

6 THE COURT: That's the birthday present from the
7 Court to her.

8 A JUROR: Thank you, sir. Appreciate it.

9 THE COURT: You are excused.

10 A JUROR: Thank you.

11 (Juror excused.)

12 THE COURT: Bring in six.

13 MR. FARBER: Judge, we are checking the
14 questionnaires.

15 THE COURT: Okay.

16 (Pause.)

17 Have them sit in this first row, all six of them,
18 please.

19 THE CLERK: The same order, Judge?

20 THE COURT: Yes.

21 (Pause.)

22 THE CLERK: There is one change. 71 is here. 47 is
23 not here.

24 MR. FARBER: Oh.

25 THE CLERK: Strike 47. 71 is here.

1 MR. FARBER: 71 is the first one?

2 THE CLERK: 71.

3 MR. FARBER: Okay. Give me a second.

4 THE COURT: Let's get it from the jurors. Give us
5 your number.

6 THE PROSPECTIVE JUROR: 13.

7 THE COURT: One-three?

8 THE PROSPECTIVE JUROR: Yes.

9 THE COURT: Next.

10 THE PROSPECTIVE JUROR: 23.

11 THE COURT: 23.

12 THE PROSPECTIVE JUROR: 80.

13 THE COURT: 80.

14 THE PROSPECTIVE JUROR: 79.

15 THE COURT: 79.

16 THE PROSPECTIVE JUROR: 71.

17 THE COURT: 71.

18 THE PROSPECTIVE JUROR: 120.

19 THE COURT: 120.

20 Okay. So we are going to proceed by stipulation,
21 take 13, 23 and 80. Each side will exercise one challenge.

22 Do you want to put that juror -- come to the
23 side bar, please.

24 (Continued on next page.)

25

1 (Side bar.)

2 THE COURT: It might be easier just to slip in the
3 juror that's left of the three in place of juror ten, if you
4 stipulate to that.

5 MS. SHARKEY: Who is the first alternate sitting
6 now? Instead of -- instead of the first alternate?

7 MR. FARBER: I think we'd rather do the first
8 alternate.

9 THE CLERK: It was 12.

10 The first alternate --

11 MS. SHARKEY: Let us look at the first alternate's
12 questionnaire.

13 THE COURT: Decide which way you want to do it.

14 THE CLERK: The first alternate is 12, the
15 questionnaire number.

16 THE COURT: They are trying to decide whether we
17 should just take the remaining juror, slip the juror in place
18 of ten or do alternate one.

19 MR. BURLINGAME: Alternate one, I think.

20 THE COURT: They want to do alternate one. That's
21 the way we will do it.

22 MS. SHARKEY: Sorry?

23 THE COURT: They want to do alternate one.

24 So the person left after each side challenges, one
25 of the three, will become alternate six.

1 MR. FARBER: Okay.

2 THE COURT: And alternate one will take the place of
3 juror ten's seat.

4 Okay?

5 THE CLERK: Understood.

6 THE COURT: What seat was he? What seat was he?

7 MR. FARBER: The one we just excused?

8 THE CLERK: Ten.

9 THE COURT: Juror ten, he was in the tenth seat?

10 Okay. That's the way we will handle it.

11 All right. You have the first three jurors.

12 Which ones do you want to exercise? The government
13 will go first.

14 MR. NORRIS: One moment, Judge?

15 (Pause.)

16 MR. BURLINGAME: Sorry, Judge. Sorry, Judge, for
17 the delay.

18 Juror 80.

19 THE COURT: 80?

20 MR. BURLINGAME: Yes.

21 THE COURT: Challenging 80.

22 MS. SHARKEY: Judge, we are doing the first three?

23 THE COURT: Challenge 13 or 23.

24 MS. SHARKEY: Okay. We will challenge juror 13,
25 Your Honor.

1 THE COURT: 23 is it?

2 MS. SHARKEY: Yes.

3 THE COURT: Why don't we hold these five now? We
4 can hold the five and have them report Thursday.

5 MS. SHARKEY: Okay.

6 THE COURT: In case we have another incident. Okay?

7 MS. SHARKEY: Okay.

8 (In open court.)

9 THE COURT: Juror 23, you are going to replace juror
10 ten, who forgot he had tickets.

11 MR. BURLINGAME: Judge, you said the first
12 alternate. He will become 18.

13 THE COURT: You will become alternate six.

14 (Side bar.)

15 THE COURT: So is the rest of the jury still here?

16 THE CLERK: Yes, Judge.

17 MR. NORRIS: Juror 12 is in the tenth position.

18 MS. SHARKEY: Your Honor, we will go either way.

19 THE COURT: That's what the government wants.

20 That's what I said first, we will do it that way.

21 (In open court.)

22 You will become alternate six.

23 Why don't you go into the jury room then?

24 Your number again?

25 THE PROSPECTIVE JUROR: 23.

1 THE CLERK: He is?

2 THE COURT: Alternate six. We are moving all the
3 alternates.

4 THE CLERK: Okay.

5 THE COURT: Take him into the jury room, please.

6 THE CLERK: Yes, Your Honor.

7 (Alternate 23 leaves courtroom.)

8 THE COURT: Ms. Lowe, have you spoken to these
9 jurors?

10 THE CLERK: No, not yet.

11 THE COURT: All right. Put them back in that jury
12 room, please.

13 Ms. Lowe will want to talk to you. So go back into
14 that jury room, please.

15 (Remaining jurors leave courtroom.)

16 THE COURT: All right. Shall we get back to our
17 motions?

18 MR. FARBER: Yes, Your Honor.

19 THE COURT: I think that covers as much as we can
20 the acid problem.

21 MR. BURLINGAME: Right.

22 So you want a letter from the government explaining
23 whether or not the CW witness -- the cooperating witness will
24 say that the defendant used the word "acid," whether or not
25 that's part of his memory of the events?

1 THE COURT: Yes.

2 MR. BURLINGAME: I can get that, Judge.

3 THE COURT: Now we have the defendant's motion to
4 reconsider the use of the 1976 polygraph test by the
5 defendant.

6 MR. FARBER: Yes, Your Honor.

7 That motion is limited based on what the Court had
8 indicated at the last conference when this issue was raised,
9 whereas you indicate there was one person who you had deemed
10 to be an expert in the past as a polygraph expert and that
11 would be the only person you would consider allowing the
12 results to come in.

13 It turns out, I believe, that Mr. Kaufman, who is
14 the person who took the polygraph of Mr. Carneglia back in
15 1976, was in fact the person you had deemed an expert.

16 THE COURT: Interesting coincidence, yes.

17 But I am not going to change my view. I am not
18 allowing it in.

19 MR. FARBER: My motion on reconsideration was based
20 simply on the words you had uttered at the last conference.

21 THE COURT: Yes. I still have a lot of confidence
22 in him, but not for this purpose. So my position remains the
23 same.

24 Now, the next motion is a motion of the defendant to
25 exclude hearsay evidence in Mr. DeLeonardo's testimony on the

1 identity of the purported shooter of Louis Di Bono.

2 MS. SHARKEY: Yes.

3 THE COURT: The government hasn't responded. So
4 they have to have an opportunity.

5 MR. BURLINGAME: If you would like, I can respond
6 orally.

7 THE COURT: Okay. I will take it.

8 MR. BURLINGAME: This is -- it is not hearsay or,
9 rather, it is covered by the coconspirator exception. It's
10 that Mr. DeLeonardo was informed by multiple other members of
11 the Gambino Family after the Di Bono murder that the defendant
12 was part of the hit team, that he committed the murder.

13 THE COURT: They were both members at that time?

14 MR. BURLINGAME: Yes.

15 THE COURT: We usually allow that kind solidifying
16 discussion to come in. It's used very often among these
17 members of the mob, to bind themselves together in
18 comradeship.

19 MS. SHARKEY: I understand the Court's ruling.

20 Certainly, a review of the 3500 material doesn't
21 reveal a basis for its admission at this point. I understand
22 Mr. Burlingame's representation. Although I think that for
23 the -- for the government to meet the burden and overcome a
24 Crawford issue, he would have to identify for the Court the
25 member of the Gambino Family who told him that. I mean,

1 Mr. DeLeonardo --

2 THE COURT: How could it be a Crawford issue? This
3 defendant didn't utter this information during an examination
4 by police. How is it a Crawford issue?

5 MS. SHARKEY: No, Judge.

6 What -- I'm saying, I understand Mr. Burlingame's
7 representation, saying that it comes in under 802 --
8 801(d)(2), but what I am asking is that the Court require
9 before that information comes in that the government represent
10 with whom Mr. DeLeonardo says that conversation occurred and
11 when he says that conversation occurred.

12 I'll tell you why, Judge.

13 Reviewing numerous transcripts of this witness's
14 testimony, on more than one occasion or two occasions he made
15 that comment, that Mr. Carneglia was part of the hit
16 team -- and I am paraphrasing -- of Mr. Di Bono. There was
17 never any follow-up concerning where that information came
18 from.

19 I am asking that before the Court allow that to come
20 in the government makes an offer of proof with some level of
21 specificity. Certainly, DeLeonardo wasn't there.

22 THE COURT: Do you have a response?

23 MR. BURLINGAME: I don't know of any reason why we
24 should be required to disclose our -- they can ask whatever
25 questions they want of him under cross-examination.

1 THE COURT: I think that's enough given the
2 representation I already have.

3 Okay. Anything else?

4 MS. SHARKEY: No, Judge.

5 THE COURT: We will have openings finally Thursday.

6 MR. BURLINGAME: Thursday morning.

7 THE COURT: Weather permitting, yes.

8 MR. BURLINGAME: Judge, are we -- is the new
9 schedule because the marshals can't get the defendant here
10 until 9:30, we are going to -- we will have -- because Your
11 Honor said the typical schedule would be from 9:00 to 9:30, we
12 would have the precourt meeting and then we would start the
13 testimony at 9:30. Will that be pushed back by half an hour?

14 THE COURT: What's the marshal situation? Can they
15 get the defendant here at 9:30?

16 THE MARSHAL: I think by 9:30 they will be here. We
17 can't do it by 9:00. I would hope that by 9:30 that we'd have
18 him here.

19 THE COURT: Most of the discussions will be on law
20 anyway.

21 MR. FARBER: Judge, Mr. Carneglia has expressed a
22 desire to be present when we do pretrial -- the motions for
23 each day.

24 THE COURT: All right. We will have to try to deal
25 with it. Get him here as quickly as you can after 9:00.

1 THE MARSHAL: Yes, Your Honor.

2 MR. FARBER: What time would you like the parties to
3 be here?

4 THE COURT: 9:00 o'clock.

5 Some of them will be strictly legal, technical,
6 housekeeping problems. We don't need the defendant for them.

7 All right. Anything else? Any further business?

8 MR. FARBER: No.

9 THE COURT: See you all Thursday.

10 MR. BURLINGAME: Thank you.

11 MS. SHARKEY: Thank you.

12 MR. FARBER: Thank you, Judge.

13 (Whereupon, a recess was taken until January 29,
14 2009, at 9:30 am.)

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